Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point I.—Appearance of guardian in Court without certificate of administration.*)

benefit of minors or of persons who had claims against their estates that no person should be able to sue on their behalf, and no person should be able to sue them, without first getting out certificates of administration; and it seems to me that any danger which would attend dealing with the estates of minors by uncertificated persons is sufficiently guarded against by the fact that any person may come to the Court under section 4 of Act XL of 1858 and apply that a person may be appointed to guard the interests of the infant; and if the Court choose to grant the application and appoint a guardian, I take it that the power of the uncertificated person would at once cease, and that, if the litigation entered on by him was improper, he could be punished by being made to pay the costs."

Nor does he think the proposal of the Government of India, to repeal the second clause of section 3 of Act XL of 1858, should be carried out. Regarding this he writes:—

"If that alteration is made, it seems to me that a safeguard which the law now provides for minors would become less effectual. Suppose a debtor to the estate of a minor forces a person interested in the minor to go to Court: if that person does not claim the charge of the minor's property, Act XL of 1858 does not stand in his way; he sues under Chapter XXXI of the Civil Procedure Code, and any benefit which may accrue from the suit would be secured to the minor. If the proposed alteration in the Civil Procedure Code is made, namely, that no next friend should be allowed to take any benefit on behalf of the minor unless he satisfies the Court that it will be applied for the benefit of the minor, the debtor thus secures the proper guarding of the rights of the minor. Again, if the person who makes the claim on behalf of the minor is also claiming the right to have charge of the property of the minor, the debtor can, and it seems to me rightly can, prevent him taking advantage of Chapter XXXI of the Code and compel him to take out an administration certificate, thus again securing the rights of the minor; but if the alteration suggested by the Government were made the debtor could not compel him to take out a certificate, and a proviso making him give security that any benefit accruing from the litigation should be applied on behalf of the minor is not nearly so effectual when taken from a person who claims a right to have charge of a minor's property as when taken from a person who claims no such right, but, without being interested in the minor's property, has merely asked the assistance of the Court to get him his rights.

"Again, take the case of a suit brought against a minor. If no person claims the right to have charge of the property, the creditor very rightly comes in under Chapter XXXI and secures his rights, and the rights of the minor are adequately represented by a guardian *ad litem*; but if any person does claim the right to have charge of the property of the minor, I do not think the rights of the minor are adequately secured by appointing such person guardian *ad litem*; it could not be done under the present state of the law; he would have to take out a certificate; but if the law was altered as suggested by the Government, it might be done and, as it seems to me, the rights of the minor be thereby prejudiced.

"I do not quite see that the alteration suggested by the Government is necessary to enable the person who thinks he has a right to take charge of the property of a minor to come in under Chapter XXXI; if no one challenges him he will make no claim to have the charge of the minor's estate, and he will act under Chapter XXXI; but if any one challenges him, it will no doubt have the effect, as the law now stands, of compelling him to take out a certificate.

"Another point of view which I submit may be worthy of consideration is the change which the alteration of law proposed by Government would have in cases where the person who claims the right to have charge of the minor's property wished to deal with it himself alone. At present he must establish to the satisfaction of the Court his right to so deal with it and that it will be dealt with for the benefit of the minor. Once he has done that no person other than he can represent the minor as a party in a suit, and no decrees could be got against the estate of the minor without making him a party. If the alteration suggested by the Government were carried out, and a person who claimed the right to have charge of the property of a minor was not bound to take out a certificate in order to be made a defendant in a suit against the minor, might not a fraud be committed by a person claiming the right to the property of a minor getting appointed a guardian *ad litem* and suffering a decree to be executed against the property of the minor? Such a case could not happen if the Government alteration is not carred out, because such a person would have to take out a certificate before being made a defendant."

41. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

considers that the clause in the Minors' Acts should be repealed, and the Courts allowed full discretion under the Civil Procedure Code. He observes that the interests of guardians appointed under the Minors' Acts may often, in special cases, be opposed to those of the minors.

42. THE CHIEF COMMISSIONER OF BRITISH BURMA—

invites attention to the remarks of the Recorder of Rangoon (*supra*, paragraph 40) regarding the construction of section 3, clause 2, of Act XL of 1858 and Chapter XXXI of the Civil Procedure Code, and suggests that the law should be so expressed as to convey the meaning there assigned to it.

He agrees that Mr. Justice Melvill's proposal (see paragraph 4, *supra*) should not be adopted; but he observes that, for the reasons given by the Recorder (see paragraph 40, *supra*), it appears desirable to maintain the second clause of section 3 of Act XL of 1858.

43. MR. J. KNOX WIGHT, DEPUTY COMMISSIONER OF CACHAR,—

says the repeal of the second clause of section 3 of Act XL of 1858 would doubtless in some ways be a great boon to intending minor suitors, but that the ultimate effect would be that self-constituted guardians would seldom or never apply for a certificate of administration, except in cases where there is a dispute among rival guardians. He considers it desirable in the interests of minors that certificates should be taken out, and he is therefore opposed to the proposed repeal. To

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point II.—Execution of decrees, &c., by next friends and guardians* ad litem.)

remedy the anomaly pointed out in paragraph 5 of the Resolution, he would compel all guardians by virtue of relationship to take out a certificate before suing on behalf of minors.

44. MR. H. MUSPRATT, DISTRICT JUDGE OF SYLHET,—

considers the adoption of Mr. Justice Melvill's proposal (*supra*, paragraph 4) would cause great inconvenience.

45. BABU KOYLAS CHUNDER GHOSE, GOVERNMENT PLEADER, SYLHET,

makes some remarks bearing on the conflict between clause 2 of section 3 of Act XL of 1858 and Chapter XXXI of the Civil Procedure Code.

46 THE RESIDENT AT HYDERABAD—

agrees in the remarks in paragraph 5 of the Resolution, as to the conflict between clause 2 of section 2 of Act XX of 1864 and Chapter XXXI of the Civil Procedure Code. But he suggests that instead of repealing that clause it should be amended so as to run as follows:—

"No person shall be entitled to institute or defend any suit connected with the estate of a minor unless and until he shall have obtained from the Civil Court a certificate of administration in respect of such estate:

"Provided that in cases when no such certificate has been granted, any Court having jurisdiction may, when the property in litigation is moveable property, or when the value of the property, in litigation does not exceed Rs. 500, allow any relative of a minor to institute or defend a suit in his behalf."

He "does not anticipate that the number of guardians by relationship who would have to take up certificates [under such a provision] would be materially larger than at present, except in the case of uncontested applications. In these there would probably be an increase, and attendance at Court would create a certain amount of hardship, which would, however, be minimized by a judicious resort to the proviso in section 5, Bombay Minors' Act." "It would," he says, "further be necessary to extend the provisions of section 464, Civil Procedure Code, by substituting 'section 440' for 'section 442.'"

Point II.—Execution of decrees, &c. by next friends and guardians ad litem.

II.—Whether a next friend or a guardian ad litem *should (by an extension of section 461 of the Code of Civil Procedure) be allowed to execute a decree or receive money or property in the course of litigation it being made clear that a next friend or guardian* ad litem, *who is also a guardian appointed under the Minors' Act with power to receive money on behalf of the minor, shall not be required to give security.*

48. MR. S. SUBRAMANIYA IYER, HIGH COURT VAKIL, MADRAS,—

is strongly of opinion that neither guardians nor next friends should be allowed to take money out of Court on behalf of a minor, whether before or after decree, without giving security.

49. MR. PLUMER—

would add to the clause which he proposes should take the place of clause 2 of section 2 of Act XX of 1864 [see paragraph 6 of précis] a proviso to the effect that no guardian *od litem* who has not obtained a certificate from the Court shall be allowed to receive or take any money or other property due to the minor under a decree in any suit in which he has acted as guardian on behalf of the minor unless he has first obtained leave of the Court which passed the decree, &c., and gives satisfactory security that such money or other property shall be applied to the benefit and use of the minor.

50. MR. BARCLAY—

says that if his suggestion [see paragraph 7 of précis] that the right to sue for and to defend minors or their estates be given only to the managers of their estates (the Collectors) and the holders of certificates of administration, section 461 of the Code of Civil Procedure would, in cases coming within the provisions of the new Minors' Act, be unnecessary.

51. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

52. SIR CHARLES TURNER, (LATE) CHIEF JUSTICE OF MADRAS,—

suggests, in connection with section 461 of the Civil Procedure Code, that every Court obtaining control over property, of which there is no trustee, belonging to a minor for whom no guardian of the property has been appointed, should be required to give such directions as, having regard to the nature of the property, may sufficiently protect it from waste and secure its proper application.

A rule of this kind is, he says, already followed in the Madras High Court.

53. MR. JUSTICE WEST—

thinks the Court should have a discretion as to who may receive money or other property won for a minor by a next friend.

He further suggests specific provision being made that an administrator duly appointed should have power to receive and pay money for the minor under decrees, and also power to settle disputes in actual litigation or likely to lead to litigation; also that a proviso might be added affirming the general principle of the voidableness as against the minor of fraudulent and collusive transactions imputable to the person benefiting by them.

54. SIR CHARLES SARGENT AND MR. JUSTICE MELVILL—

approve of the Government of India's proposal.

55. MR. JUSTICE FIELD—

writes as follows:—

"Section 461 sufficiently provides for the interests of the minor in respect of money or other things received or taken by the next friend or guardian *ad litem* in those suits to which the chapter of the Code of Civil Procedure applies. In suits brought by a certificated manager, he would have the same control over the money or property of the minor which he would exercise in matters unconnected with litigation, and the proper discharge of his duty should here be secured, as I have already pointed out (see paragraph 362 of précis), by requiring him to give security commensurate with the value of the property entrusted to his management. This is the rule in the case of receivers, mercantile agents and other persons discharging fiduciary duties. The same rule should be made applicable to persons discharging similar duties in respect of a minor's estate."

56. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) see no objection to the adoption of the Government of India's proposal; but they

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point III.—Voidance of alienations, &c., made by uncertificated Guardians.)

(Point IV.—Whether Court's Sanction should be required to alienations.)

would require the next friend or guardian *ad litem* to give adequate security (in all cases, apparently).

57. MR. DUTHOIT—

supports the following proposals made by Messrs. Melvill and West (*J J.*) :—

By Mr. Justice Melvill.—Execution of a decree in favour of a minor should not be granted to a "next friend" or a "guardian for the suit" until such person take out a certificate entitling him to the care of the minor's estate.

By Mr. Justice West.—When a decree is obtained in favour of a minor by a next friend, the next friend should be allowed to execute the decree either on terms of giving security, or leaving the money to be dealt with by the Court, or on terms of taking out a certificate of administration; but a certificated administrator should in all cases be entitled to obtain execution of a decree obtained in favour of a minor by a next friend.

He says he can see no objection to the first of these proposals, which "corresponds somewhat with the provision of the Roman law contained in the early part of *Dig. IV.*, 4, 7, § 2;" but he would "prefer to read into Mr. Justice Melvill's proposals that of Mr. Justice West, which closely corresponds with the later provision of the Roman law contained in the latter part of the same passage of the *Digest*." He adds "If the money is paid into Court, I would advocate a provision in the law allowing the Court to invest it in Government stock or promissory notes."

Mr. Duthoit prefers such a provision to that suggested by the Government of India.

58. MR. H. J. SPARKS and THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

approve of the Government of India's proposal.

59. LALLA MADAN GOPAL—

suggests that it should be provided in section 461 of the Civil Procedure Code that "an application for execution of decree may be made by the next friend of a minor decree-holder, but he is not to take out the money without giving security."

60. COLONEL C. A. MCMAHON—

writes as follows :—

"I would repeal section 461 of the Civil Procedure Code. If the person who has to pay the money does not see the necessity, for his own protection, of forcing the guardian or next friend to take out a certificate, as provided for in my paragraph 4 [see paragraph 28 of précis], I do not see that the Civil Court need trouble itself about the matter."

61. MUHAMMAD LATIF—

suggests that the only change required in the law is the addition of a clause to section 461 of the Civil Procedure Code empowering a next friend or guardian *ad litem* to receive property in execution of a decree.

He also suggests that the provision in that section regarding security is unnecessary and should be removed altogether.

62. UMAR BAKHSH—

thinks a certificated guardian should have a right to execute a decree obtained either by himself or by any other person who has acted as next friend before his own appointment. He also thinks certificated guardians should not be required to give security, but that other persons should be so required, the Court, however, having a discretion to dispense with security in the case of near relatives acting as guardians.

He further suggests that it should be left optional with guardians desiring to execute a decree either to give security or to take out a certificate of administration.

63. COLONEL GURDON—

agrees with Muhammad Latif (paragraph 61, *supra*) that no security should be required from any guardian under section 461 of the Civil Procedure Code, adding that the provision is unnecessary if the Courts work section 443 properly.

64. SARDAR GURDIAL SINGH—

thinks no one should be allowed to receive money on behalf of a minor in execution of a decree unless he either holds a certificate of guardianship or tenders sufficient security.

65. MR. R. J. CROSTHWAITE—

says the proposed amendment of section 461 of the Civil Procedure Code would be an unquestionable gain.

66. LIEUTENANT-COLONEL GRACE—

approves of the Government of India's proposal.

67. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

approves of the proposed amendment of section 461 of the Civil Procedure Code, except that he would not fetter the discretion of the Courts as to taking security.

68. THE CHIEF COMMISSIONER OF BRITISH BURMA—

approves of the Government of India's proposal.

69. MR. H. MUSPRATT—

concurs in the proposed extension of section 461 of the Civil Procedure Code, but would not except the rule as to security.

[See also remarks by—
the Recorder of Rangoon, in paragraph 40 of précis; and
Mr. Wigram, in paragraph 370 of précis.]

III and IV.—Whether the following proposals made by the Hon'ble Mr. Justice Melvill with a view to rendering it unsafe for any person to enter into any transaction affecting immoveable property, except with a certificated administrator, should be accepted, namely :—

Point III.—Voidance of alienations, &c., made by uncertificated guardians.

Point IV.—Whether Court's sanction should be required to alienations.

(*a*) *that any alienation or incumbrance of, and any abandonment of the rights of the minor in, any immoveable property, by a guardian, should be made void, unless he holds a certificate under the Minors' Act; and*

(*b*) *that the provision in the second clause of section 18 of Acts XX of 1864 and XL of 1858, which requires the previous sanction of the Civil Court to any alienation or incumbrance of immoveable property by a certificated guardian, should be repealed.*

70. In regard to proposal (*a*), the Government of India pointed out that it would require very careful consideration with reference to the facts, peculiar to India, (1) that the number of minors owning immoveable property without the intervention of trustees is very large, and (2) that cases constantly arise in which it is necessary to deal with the immoveable property of minors by way of sale, mortgage, &c. These two facts would, if the proposal were adopted, necessitate a very large

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point III.—Voidance of alienations, &c., made by uncertificated Guardians.*)

number of guardians by relationship taking out certificates, and this would entail much trouble on the people in attending the Courts, and would also tend, by reason of the business being made a Court matter, to foster acrimonious disputes. "Further, it may be observed that the Government does not possess any definite knowledge as to the supposed evils of the existing system, beyond the fact that a considerable amount of litigation arises regarding transactions effected by guardians; but whether this amount of litigation is large, considering the number of the transactions, may be open to doubt. In connection with this point, a further question presents itself, *viz.*, whether litigation of the kind under consideration usually arises from persons wrongfully usurping the position of guardian or from the rightful guardians abusing their powers. If the latter is the true cause, the plan suggested by Mr. Justice Melvill would scarcely afford a remedy, inasmuch as the guardian, after he had been granted the certificate, would, under the second of the two proposals embraced in that plan, be left to act without the sanction of the Court. On the other hand, if Mr. Justice Melvill's first proposal were adopted without his second, it may perhaps be anticipated that the number of cases coming before the Courts under the second clause of section 18 of Act XX of 1864, and the corresponding provision of the Act of 1858, would be so great as to render it doubtful whether it would not be beyond the power of the Courts to deal with them with that degree of care which is essential in such matters."

Point III.—Voidance of alienations, &c., made by uncertificated guardians.

71. MR. HUTCHINS—

is opposed to the adoption of proposal (*a*). He thinks the law as it stands already makes it "unsafe to enter into any transaction affecting a minor's immoveable property," and says it is only fair to the minor that persons buying such property should have to satisfy themselves that the transaction is an equitable one. This safe-guard would be removed if guardians were certificated, since the certificate would tend to inspire confidence in the mind of the purchaser as to the guardian having absolute power to deal with the property; and that would be an undesireable result, Mr. Hutchins's experience showing that litigation in these cases generally arises from the rightful guardian, who can easily obtain a certificate, abusing his powers.

Mr. Hutchins would except from his remarks the case of undivided families, "and perhaps even of some other joint proprietors."

72. Mr. S. SUBRAMANIYA IYER, HIGH COURT VAKIL, MADRAS,—

thinks it would be unwise to give guardians any absolute authority to bind minors by alienations of their estates.

73. Mr. PLUMER—

strongly protests against the adoption of proposal (*a*), for the reasons given in paragraph 7 of the Government of India's Resolution. He thinks there can be little doubt that litigation arises principally, if not entirely, from abuse of powers by rightful guardians, and that the proposal is therefore rendered useless by proposal (*b*), independently of the other objections to it.

He says with Mr. Hutchins (see paragraph 71, *supra*) that much keenness is displayed under existing circumstances by purchasers of minors' property, in ascertaining that the transaction is an equitable one and therefore ultimately binding on the minor.

74. Mr. W. WILSON, DIRECTOR OF REVENUE SETTLEMENT AND AGRICULTURE, MADRAS,—

does not think either proposal (*a*) or (*b*) should be adopted, remarking that, although they may be in the interest of the guardian and the alienee, he cannot see how they can be regarded as being in the interest of the minor, for whose protection the law is intended.

75. MR. E. BARCLAY, GOVERNMENT SOLICITOR, MADRAS,—

approves of proposal (*a*), as being in accordance with his suggestion (see paragraph 7 of précis) that no one but the manager or certificated administrator should have power to deal with a minor's estate.

76. THE MADRAS BOARD OF REVENUE—

concur in the Government of India's remarks.

77. SIR CHARLES TURNER—

writes:—

"For reasons which are fully stated in the Resolution of the Government of India, it does not appear expedient to prohibit guardians from dealing with the immoveable property of minors unless they have obtained a certificate.

"In no country is the compulsory recourse to Courts more distasteful to the people, and in no country is property in land more minutely subdivided or intersts in it more largely held by minors. The Mitakshara, which makes every son on his birth a co-owner with his father, obtains throughout this Presidency, except in Malabar and South Canara, and in those countries, in many Brahmin families and under the tarwad systems of Malabar and South Canara, minors on their birth become co-owners of the tarwad estates."

78. MR. JUSTICE MELVILL—

suggests that, to meet the Government of India's objections to his proposal (*a*), cases in which the minor's property does not exceed Rs. 500 should be excepted. With this limitation, and with the exclusion of managers of joint Hindu families (as to whom, see paragraph 379 of précis), the inconvenience to the public and the labour entailed upon the Courts would, he says, probably not be great, especially if the District Court were authorised to form its decision upon evidence taken by a Subordinate Court at no great distance from the residence of the parties. With these limitations, Mr. Melvill still thinks that it is desirable that every person who assumes a right to take charge of the property of a minor should be required to submit himself to an examination of his fitness; and that, when his fitness has been once ascertained and certified by the Court, he should then be left free to deal with the minor's property without further interference, but subject to the right of the minor to impeach, when he attains his majority, any alienations made by the administrator. * * The Court has good opportunities for ascertaining the general fitness of an administrator, but it has not the means of satisfying itself as to the advisability of any proposed alienation. It is very liable to be misled by a fraudulent administrator, and it might be very hard upon the minor if a sanction obtained from an imperfectly informed authority were to render the alienation unimpeachable.

"But the case is different when the administrator is the Collector or an officer of the Court. Here, at all events, the Court will not be wilfully misled, and it will have all the information which the administrator can afford. It might be advis-

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(*Point III.—Voidance of alienations, &c., made by uncertificated Guardians.*)

able to provide for a proclamation or advertisement inviting persons to come forward who might have any objection to a proposed alienation. With these precautions, I think that the sanction of the Court to alienations might properly be given, and that transactions so sanctioned should not afterwards be liable to be impeached."

79. MR. T. T. ALLEN—

dissents from proposal (*a*). He says "it would cause great inconvenience to refuse powers of alienation to any but certificated guardians, and to deny them rights which their several systems of personal law give them. It would also inundate the Judge's Court with work of a trivial character."

80. THE JUDGES OF THE CALCUTTA HIGH COURT—

concur generally in the views expressed in paragraph 7 of the Government of India's Resolution. They cannot support Mr. Justice Melvill's proposal (*a*), thinking no sufficient cause is shown for adopting it, and that it would cause great hardship, and explaining particularly that it would involve a serious change in the Hindu law, under which alienations by the manager continually take place during the minority of some member of the family, although he holds no certificate of administration.

81. MR. JUSTICE OLDFIELD—

disapproves of Mr. Justice Melvill's proposal (*a*). He writes:—

"The objections to any such enactment, which are fully set out in the Resolution, appear to me conclusive. Such evils as exist are due not so much to persons usurping wrongfully the office of guardians, as to abuse of their powers by rightful guardians, and are nothing in comparison to those which would issue from insisting on certificates of administration being taken out: not only would the general inconvenience be great, but the interests of the minor would probably be neglected in numerous instances."

82. MR. JUSTICE STRAIGHT—

thinks the adoption of Mr. Justice Melvill's proposal (*a*) would not be satisfactory, and would certainly, in the North-Western Provinces, cause enormous inconvenience.

83. MR. B. W. COLVIN—

approves of Mr. Justice Melvill's proposal (*a*) provided estates of small value are excepted.

84. MR. DUTHOIT—

says, with reference to the Government of India's remarks in paragraph 7 of the Resolution, (1) that he sees no reason to apprehend that the Courts would be swamped with minors-protection business; (2ndly) that in most districts of the North-Western Provinces and Oudh the subordinate Civil Courts are so distributed that, if the proposals which he has made elsewhere [see paragraph 291 of précis] should be approved, no appreciable hardship from having to attend Court need be caused to the people; and (3rdly) that he sees no reason to suppose that minors-protection business would, in the North-Western Provinces and Oudh, be in any large measure contentious.

It will be seen from paragraph 291 of this précis that Mr. Duthoit is inclined to support Mr. Justice Melvill's proposal (*a*). He suggests, however, that if it is adopted it should (besides being amended as there suggested) carry a proviso that it shall not apply to the case of a Hindu minor who is a member of an undivided family, wherein is an adult member capable of managing the family property.

85. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

invites attention to the opinions expressed by Messrs. Oldfield and Straight, *J. J.* [paragraphs 81 and 82, *supra*]. He writes: "If this proposal were adopted, it might result that the number of guardians who would be obliged to take out certificates would be so large that the Courts might fail to deal effectively with the numerous cases that would come before them; or that the trouble and annoyance of having to take out certificates would deter many persons from undertaking the office of guardian, whereby the interests of minors would suffer. The inconveniences pointed out in paragraph 7 of the Resolution would undoubtedly follow the adoption of the proposal; and the facts stated by Mr. Duthoit [see paragraph 291, *infra*] and also by Mr. Justice Oldfield [see paragraph 81, *supra*] show that the proposal would fail to secure its object, since the litigation which arises on this subject is chiefly caused, not by persons wrongfully usurping the position of guardian, but by rightful guardians abusing their powers."

86. MR. JUSTICE SMYTH—

says suits in which minors after attaining their majority contest alienations made during their minority by their guardians are not numerous in the Punjab, and that his experience is that persons acting as guardians, whether they are the rightful guardians or not, do not often abuse their powers, but usually try to do what they think best for the minor. He adds that his impression is that it is the person who is rash enough to take a conveyance from the guardian rather than from the minor himself who suffers most under the present system, and observes that in such cases the remedy lies in the alienee's own hands.

He considers that, for the reasons stated in paragraph 7 of the Resolution, it would be very unwise to adopt Mr. Justice Melvill's proposal (*a*) in the Punjab, "where, on the whole, the people get on very well without having recourse to certificates."

87. MUHAMMAD LATIF—

is strongly opposed to Mr. Justice Melvill's proposal (*a*), on the grounds that it is unnecessary that the ignorance of the people would prevent their getting news of so serious a change having been made, and that it would increase litigation and unnecessarily impede the administration of justice. He adds that the ordinary law sufficiently provides for calling guardians to account for mal-administration of a minor's estate.

88. UMAR BAKHSH—

thinks the drawbacks attending proposal (*a*), resulting from requiring a large number of people to have recourse to the Courts, outweigh any advantages which it may possess.

Further on, however, he suggests that alienations by certificated guardians who are not relatives of the minor, in favour of persons with whom they have personal dealings, should be made unsafe, if not declared altogether void. Cases have come to his knowledge in which guardians have indirectly derived personal benefit from such transactions, and it is, he says, very hard in such cases to prove actual fraud.

89. COLONEL E. P. GURDON—

is strongly opposed to proposal (*a*), and agrees with Muhammad Latif [paragraph 87, *supra*]

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that the Hindu and Muhammadan laws sufficiently guard the interests of minors in the matter in question.

90. MR. H. T. RIVAZ—

thinks proposal (*a*) would work great injustice in the Punjab, "in many parts of which the people still remain persistently ignorant of all enactments which conflict with their usual practices, and where no evils are apparent as the result of the existing system. Cases no doubt occasionally occur in the Courts where minors, on attaining majority, sue to contest alienations of their property made during their minority by persons purporting to act as their guardians. In these cases, which are not numerous, I should say that the alienations contested are upheld as often as they are set aside, and my experience is that in a very small minority of the cases does it appear that the guardian has really abused his powers as such, or seriously neglected the interests of his ward, or in fact acted otherwise than for the benefit of the minor. Any dishonesty which appears is usually that of the minor or his advisers, who, finding when the former comes of age that property which during his minority was sold for fair value and for his benefit has much increased in value of late years, immediately seek to repudiate the transaction with the sole view of preventing the *bonâ fide* purchaser from reaping the fruits of what has eventually turned out to be a profitable bargain. I therefore think that the objections so forcibly put forward in paragraph 7 of the Government of India Resolution deserve the greatest weight and consideration so far as the Punjab is concerned."

91. MR. R. J. CROSTHWAITE,—

referring to paragraph 7 of the Resolution, says litigation regarding transactions effected by guardians arises, according to his experience, almost entirely from rightful guardians abusing their powers, and occurs generally where the Hindu law is applicable, the question usually raised being whether the minor is bound by the act of the manager of the family property.

92. MR. BEHARI LAL BASU,—

referring to paragraph 7 of the Resolution, argues that the difficulties there stated as likely to be caused to guardians by the adoption of Mr. Justice Melvill's proposal (*a*) ought not to be allowed to prevent the enactment of any provision tending to the welfare of the minor, whose interests it is the duty of the State to protect; and he considers that proposal well calculated to check the proceedings of dishonest guardians.

He suggests that, if that proposal is adopted, something should be done to reduce court-fees chargeable on the certificates of guardians.

Referring to the possible objection that the general requiring of certificates would tend to upset the joint family system, he says "there is a marked change in the advanced parts of India, where the true notions of the joint family are disappearing."

93. LIEUTENANT-COLONEL GRACE—

says that in the Central Provinces "litigation does not arise from persons wrongfully usurping the position of a guardian, but it often arises from rightful guardians abusing their powers in respect to transactions effected by them."

He does not think it necessary to adopt proposal (*a*), observing that the interests of minors "are otherwise sufficiently guarded, inasmuch as they, on attaining majority, can, within the time allowed by the Statute of Limitation, question the acts of their guardians during their minority and take legal action; and guardians, purchasers, &c., on whom the *onus probandi* is thrown, have to justify and vindicate their doings."

94. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

regards proposal (*a*) as unnecessary and impolitic. The taking out of a certificate, he says, affords no guarantee that the holder will not abuse his trust; while, on the other hand, such a provision as is proposed would tend to hasten unduly the disintegration of the joint family system, which is already proceeding fast enough.

95. THE COMMISSIONER OF THE TENASSERIM DIVISION—

considers that "any change in the direction of making the obligation to take out a certificate, &c., more stringent than at present, as suggested by Mr. Justice Melvill, is, in the present condition of this province [British Burma], much to be deprecated."

He continues: "My reasons for holding this opinion are so clearly stated in paragraph 7 of the Resolution, which, I think, is applicable to all legislation of this description, that it is unnecessary to go into them; but I may add that in this province, during the years when the Special Court maintained that the Indian Succession Act was practically applicable to all classes, the real hardship and unnecessary litigation which such measures really inflict on all, but especially on the poorer and more ignorant portion of the population, in a country like this, were very clearly brought to light."

96. THE RECORDER OF RANGOON—

agrees with the Government of India that the balance of considerations is in favour of not adopting proposal (*a*).

97. THE JUDICIAL COMMISSIONER OF BRITISH BURMAH—

does not approve of proposal (*a*).

He writes: "It seems to me that the time cannot be far distant when administrative arrangements could be made enabling a specific class of local officials corresponding to the *Juges de Paix* of the Code Napolean to watch over the interests of minors by controlling the appointment of guardians and nominating a *conseil de famille* and surrogate guardians in certain localities for every minor therein. Great hardship would, I consider, be involved in the general application of Mr. Melvill's principle so long as the District Judges' Courts are the only Courts which can deal with such matters."

98. THE CHIEF COMMISSIONER OF BRITISH BURMA—

considers the reasons stated in paragraph 7 of the Resolution justify the rejection of proposal (*a*).

99. MR. J. KNOX WIGHT—

fully concurs in the reasons advanced by the Government of India in paragraph 7 of the Resolution for rejecting proposal (*a*). That proposal, he says, involves a great change in existing customs for which no necessity has been made out.

100. MR. H. MUSPRATT—

concurs in the remarks in paragraph 7 of the Resolution.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point IV.—Whether Court's sanction should be required to alienations.*)

101. BABU KOYLAS CHUNDER GHOSE—

observes that the adoption of proposal (*a*) would seriously affect the interests of minors, especially in cases where there are numerous sub-divisions of an estate.

102. COLONEL W. HILL, COMMISSIONER OF COORG—

says the objections to proposal (*a*) which are stated in paragraph 7 of the Resolution apply fully to the circumstances of Coorg.

103. THE RESIDENT AT HYDERABAD—

says that if proposal (*a*) is adopted certificates would be necessary before almost any transaction affecting the immoveable property of a minor could be entered into. "The number of applications for certificates would be vastly increased; and the benefit accruing to the property of minors in a small minority of cases would be counterbalanced by the detriment to property for want of necessary action during the delay which the process of obtaining a certificate would entail. Nor would the adoption of this proposal avert that class of injury which arises from the abuse of their powers by lawful guardians."

[See also remarks by Mr. J. W. Chisholm in paragraph 37 of précis.]

104. In regard to Mr. Justice Melvill's proposal (*b*)* taken separately, the Government of India thought it might be partially adopted, even if proposal (*a*) were rejected (see paragraph 70 of précis). They wrote: "In cases in which no person has a legal claim to the guardianship, and the Court accordingly exercises a free choice in the selection of the guardian, it seems clear that the sanction of the Court to the sale or alienation of immoveable property should be required, as in such cases the Court is in a certain sense answerable for the guardian; but when the Court merely decides that a person is entitled to the guardianship by appointment, and also when it decides that a person is entitled thereto by virtue of relationship, the necessity of insisting upon such a restriction is perhaps open to doubt. In these cases it might suffice if the guardian were allowed the option of submitting the transaction to the Court for sanction, if he thought it necessary to do so for his own protection or for the satisfaction of an intending purchaser of the property."

105. MR. HUTCHINS—

sees no necessity for making a distinction between a certificated and an uncertificated guardian; but if any is to be made, he thinks that proposed by the Government of India is reasonable. He thinks every guardian should have the option of bringing *any* important matter before the Court, and should (for the particular purpose of the reference, apparently) be required to take out a certificate.

106. MR. S. SUBRAMANIYA IYER—

strongly approves of Mr. Hutchins's suggestion that all guardians should have the option of applying to the Court for advice.

107. MR. WIGRAM—

writes:—

"As regards the alienation, whether by gift, sale or mortgage, of property in which minors have a joint interest, I think that it would save much litigation to enact that no such alienation or relinquishment of a minor's right should be valid without the sanction of the District Court, and that if the sanction of the Court was obtained the alienation could not be challenged by the minor unless by a regular suit instituted on his behalf within six months. It would, of course, be requisite to provide that a formal inquiry should be held either by the District Court or through a Subordinate Court whether the alienation was necessary and expedient, and, if the mother was alive, her objection, if any, should be duly considered.

"I would expressly limit this jurisdiction to cases where a particular branch of an undivided family was represented by minors. The assent of the minor's father would, as now, imply the assent of the children."

108. MR. PLUMER—

thinks that in the case of certificated guardians the sanction of the Court should certainly be required, and that this is necessary in order to prevent derelictions of duty on the part of persons for whose conduct the Court is in a way responsible, and who would without such supervision be tempted to go wrong. He explains that this would not throw any great burden on the Courts, the number of certificated guardians not being large.

In the case of alienations, &c., by guardians whom the Courts have decided to be entitled by appointment or by virtue of relationship to act as guardian, he thinks it might be left optional to either the guardian *or the intending alienee himself* to apply to the Court to sanction the alienation.

109. MR. E. BARCLAY—

thinks that, at any rate in cases where it is proposed to sell immoveable property above a certain value, or to lease it beyond a certain term, or to encumber it beyond a certain amount, the sanction of the Court should be required (in the case of both certificated and uncertificated guardians, apparently). He points out that the case quoted by Mr. Justice Melvill (I. L. R. 5 Cal. 363) does not render alienations by certificated administrators absolutely unimpeachable, and that they can be set aside if fraud or illegality be shown; but he thinks the learned Judge's views might be met in the following way:—

"The Act might provide that in all instruments of alienation and incumbrance of a minor's immoveable property, the manager or certificated administrator should be described as such, and that the order of Court sanctioning the alienation or incumbrance should be recited, and that it should appear on the face of the instrument that it is made in pursuance of such order; and the Act might declare that the title of the purchaser, lessee or incumbrancer taking under an instrument containing such particulars shall, in the absence of fraud or illegality, be held conclusive as against the minor and all persons claiming under him."

110. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

111. SIR CHARLES TURNER—

thinks the sanction of the Court should be required only in the case of alienations and incumbrances of large amount, and that no sanction should be required in the case of properties of small value, because the attendant expenses would prove a serious burden to the estate.

*(b) That the provision in the second clause of section 18 of Acts XX of 1864 and XL of 1858, which requires the previous sanction of the Civil Court to any alienation or incumbrance of immoveable property by a certificated guardian, should be repealed.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point IV.—Whether Court's sanction should be required to alienations.)

112. MR. JUSTICE WEST—

would, in the case of minors having a sole or separate estate, give all guardians the right to come into Court and get proposed transactions approved. As to guardians appointed by the personal law of the minor, he would not bind them any further than this; and as to those appointed—not merely recognized—by the Court, he would make them subject "to such restrictions as their certificates might impose."

113. SIR CHARLES SARGENT—

thinks "the consent of the Court should be required in all cases to give effect to alienations (except leases for a short term of years) and incumbrances of or upon the minor's immoveable property, as well as to any compromise of the minor's interest in that property, and that, too, as well by the certificated administrator as by any other person claiming to have charge of the property." He thinks "that the importance attached to the granting of a certificate is greatly exaggerated, and that the powers of such administrator without the consent of the Court should be confined to what is strictly management."

He suggests that the permission to alienate or encumber should be given by the Civil Court of the district in which the property in question is situated, where the minor has property in more than one district.

114. THE HON'BLE MR. PAUL—

thinks the modification suggested by the Government of India might perhaps be safely adopted, but that the relinquishment of control should not extend any further. He does not think purchasers should be protected any further than they are at present in their dealings with a minor's estate.

115. MR. T. T. ALLEN—

dissents from Mr. Justice Melvill's proposal (*b*). He considers it necessary to retain the second clause of section 18 of Act XL of 1858. Where a minor's property is considerable, he says, a certificate is almost invariably taken out, and the great value of the Act is in the protection which the clause in question affords the minor against improper alienation of the *corpus*; while when alienation is necessary the sanction of the Judge, which is almost conclusive evidence of the *necessity* of the sale, vastly strengthens the purchaser's security, so that a better price is realised.

116. THE JUDGES OF THE CALCUTTA HIGH COURT—

see no objection to repealing the second clause of section 18 of Act XL of 1858.

117. MR. JUSTICE STRAIGHT—

thinks clause 2 of section 18 should be retained, and that all guardians appointed by the Court, whether in right of a will or deed or by its own selection, should be brought within its purview.

118. MR. H. J. SPARKS—

approves of the Government of India's proposals. (Please also see his remarks in paragraph 160, *infra*.)

119. MR. B. W. COLVIN—

approves of Mr. Justice Melvill's proposal to repeal the clause. His experience shows that the Court is commonly unable to obtain evidence upon which to form an opinion with any confidence as to the necessity or expediency of a proposed alienation; and, on the other hand, the sanction is apt to become a dangerous screen to the misdoings of guardians. The only practical value of the clause, he says, is that it gives some publicity to a guardian's doings; but this is scarcely *necessary*, and the advantage, moreover, such as it is, is more than counterbalanced by the considerations stated above. The real checks are to be found in the intervention of the minor's other relatives and friends, and in the liability of the guardian to being hereafter called to account by the minor himself; and when these fail, the Court's sanction in particular cases supplies no effective substitute for them.

120. MR. DUTHOIT—

does not think Mr. Justice Melvill's proposal to repeal the clause altogether is well-advised; but he sees no objection to a modification of it by the substitution of the words "longer period than that of the minority of the proprietor" for the words "period exceeding five years."

(Please also see his remarks in paragraph 194, *infra*.)

121. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

is disposed to agree with Mr. Justice Melvill, though he thinks the matter does not seem so important as to require a special amendment of the existing law. He adds that "the suggestion made in paragraph 8 of the Resolution, that guardians by appointment or relationship should be allowed the option of submitting any transaction to the Court for sanction, seems open to the objection that it would be likely to produce on the part of guardians a disposition to produce for sanction only those transactions in which they wished to obtain an official screen to questionable proceedings."

(Please also see his remarks in paragraph 162, *infra*.)

122. MR JUSTICE SMYTH—

writes:—

"I am inclined to agree in the views of the Government of India as expressed in paragraph 8 of the Resolution. But where a guardian who owes his status merely to the act of the Court makes an alienation of immoveable property without the sanction of the Court, I am of opinion that the alienation should not be treated as absolutely void. If it appear that the parties to the alienation acted in good faith, and that the transaction was for the benefit of the minor, I do not think that the transaction should be held to be void merely because the guardian owed his status to the act of the Court and omitted to obtain the Court's sanction to the alienation. The *onus* of proving that the alienation was effected in good faith, and was for the minor's benefit, would be on the person who affirmed its validity."

123. LALLA MADAN GOPAL—

thinks the second clause of section 18 of Act XL of 1858 should be retained, and extended to all guardains, whether certificated or not.

He further suggests that an explanation should be added declaring that alientions made without sanction will be not absolutely void, but merely avoidable on proof that the guardain acted *mala fide*, and that the transaction was not a proper one.

124. LALLA MOHAN LALL AND MIAN ASDULLA PLEADERS, OF AMRITSAR,—

suggest that, in the case of guardians other than those who owe their status to the

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

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mere act of the Court, the Court should be required to make a summary investigation as to the propriety of the alienation or encumbrance suggested; and further that a proviso be added declaring that "no such summary investigation should be held to be complete within the meaning of the Act unless the near relations of the minor, if any, or any friend interested in his welfare, have had an opportunity of protesting or objecting before the Court against the suggestions of the Public Curator or other administrator within a term to be fixed by the Court, of which due notice shall be given to them."

125. COLONEL C. A. MCMAHON—

writes:—

"I would leave the guardian to deal with the minor's property at his own risk. An *ex parte* reference by a guardian to a Civil Court for sanction to a proposed alienation might be very injurious to the minor's interests; for the Court would only have the *ex parte* representations of a possibly dishonest or interested man to go on.

"I do not think a reference of this character is worth the trouble and expense it involves, and I think it would be better for all concerned to leave the guardian to act on his own responsibility and risk."

126. MUHAMMAD LATIF—

considers it desirable to require the Court's sanction "where the Court exercises direct control over the property of the minor," but that sanction should not be required where the guardian holds his position by virtue of relationship or by virtue of a deed of appointment. In the latter cases the guardian ought, he thinks, to be held responsible to the minor for his acts.

127. UMAR BAKHSH—

suggests that every transaction involving property of the value of Rs. 1,000 and upwards should be declared invalid unless it has the sanction of the Court.

128. COLONEL GURDON—

writes:—

"Where of course there is no person with any legal claim to the guardianship of a minor, *e.g.*, no kinsman or other person who according to the personal law of the minor can claim as a right the guardianship, and when in such case the Court has selected a person to administer the minor's property, it may no doubt be advisable and just that the previous sanction of the Court should be required to render valid any alienation of a minor's immoveable property; but the application of this restriction to cases where there are persons legally entitled to guardianship according to Hindu and Muhammadan law, is, I think, to be deprecated; at any rate, if such a provision be retained, its application should only be obligatory upon guardians 'appointed by the Court.' All other guardians might be allowed at their option to apply to the Court or not, if required for the satisfaction of an intending purchaser of the property (*vide* paragraph 8 of Government of India's Resolution)."

129. MR. H. T. RIVAZ—

considers the Government of India's proposals reasonable and worthy of adoption.

He suggests that the effect of an alienation by a certificated guardian without the Court's sanction might be made clearer than it is at present. He writes: "I take it that a sale or mortgage by a certificated guardian without the sanction of the Court is not absolutely void, but voidable at the option of the minor when he attains majority, if he chose to repudiate the transaction, and subject to a refund by the minor of so much of the consideration money as has been expended for his benefit or for the benefit of his estate. If this is not the law under the section as it at present stands, I think the section should be at least modified to the extent above indicated, and I should be glad myself to see the section go further, and give the Court a discretion to refuse to set aside a sale (though the Court's sanction was wanting) if it was made clearly to appear that the transaction was a *bonâ fide* one made in the interests of the minor. This would cause no hardship to the minor, as in such cases it is a well established principle that the *onus* lies upon the party contracting with the minor's representative to show that the transaction was *bonâ fide* and for the benefit of the minor.'

130. MR. R. J. CROSTHWAITE—

fully concurs in the Government of India's proposals.

131. MR. J. W. CHISHOLM—

would repeal the second clause of section 18, because in cases of alienation no real check can be applied by the Civil Court, and consequently the sanction contemplated by the clause is often given on incomplete information, and places additional difficulties in the way of a minor should he sue, on obtaining his majority, to set aside any alienation made by his guardian as unnecessary. Such suits can, he says, always be brought, and by this means minors often recover properties wrongfully alienated.

132. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

concurs in the Government of India's proposals.

133. THE RECORDER OF RANGOON—

would retain the second clause of section 18. If it does not do much good, he says, at all events it does not do much harm.

134. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

thinks the clause should be retained. He writes:—

"It is quite true that in granting sanction under the Act the Court has nothing to guide it but the *ex parte* statements of the administrator himself, but in the absence of complete arrangements (such as those alluded to in the preceding paragraph)* the necessity of obtaining sanction acts as a wholesome though partial check, and should not, in my opinion, be done away with."

135. THE CHIEF COMMISSIONER OF BRITISH BURMA—

says there appears to be no sufficient reason for repealing the clause.

136. MR. J. KNOX WIGHT—

thinks the clause should be retained, because it tends to the benefit of the minor and the purchaser alike as well as to the protection of the guardian. The necessity for moving the Court, he says, prevents the making of improper bargains.

(Please also see his remarks in paragraph 179, *infra*).

137. COLONEL W. HILL—

agrees that "it will suffice if guardians are allowed the option of submitting transactions to the

* See paragraph 97 of précis.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(Point V.—Right of certificated administrator to appear in Court. Point VI.—Declaration as to powers of Guardians)

Court for their own protection or for the satisfaction of an intending purchaser of property."

138. THE RESIDENT AT HYDERABAD—

approves of the Government of India's proposals.

[See also remarks by—

Mr. W. Wilson, in paragraphs 74 and 151 of précis;

Mr. Justice Melvill, in paragraph 78 of précis;

the Hon'ble Mr. O'Sullivan, in paragraph 154 of précis;

Mr. Justice Oldfield, in paragraph 227 of précis;

Mr. Justice Field, in paragraph 258 of précis:

Khan Ahmad Shah, in paragraph 296 of précis; and

Sardar Gurdial Singh, in paragraph 297 of précis.]

Point V.—Right of certificated administrator to appear in Court.

V.—Whether, assuming it to be the intention of the legislature (see sections 464, 440 and 441 of the Code of Civil Procedure) that a guardian appointed under the Minors' Act possesses no right as such to appear on behalf of a minor, but that he must sue as next friend or be appointed to defend as guardian ad litem, *the Code of Civil Procedure should not be amended so as to make this more clear.*

139. MR. HUTCHINS—

would require that every one suing on behalf of a minor should either have taken out a certificate or obtained the previous leave of the Court—the latter provision to meet cases where the rightful guardian is the defendant or is interested in the defendant or is averse to taking legal proceedings.

He adds that where the minor is a defendant the intention seems to be that he should be sued as under the protection of his guardian, where one has been certificated or appointed by the Court of Wards or a Civil Court, section 443 of the Civil Procedure Code being to this extent controlled by section 464; and that it is only where there is no such guardian that the particular tribunal is to appoint a guardian *ad litem*.

140. THE HON'BLE MR. O'SULLIVAN, ADVOCATE GENERAL OF MADRAS,—

suggests that in all suits against a minor the administrator should be made a party as guardian *ad litem*, but that the Courts should have power to permit a friend or relative of the minor also to appear to defend the suit in cases in which such a course appears to be advisable; also that the administrator should have authority to institute suits on behalf of the minor, with power to the Court to give the conduct of any particular suit, or classes of suits, to any person named, other than the administrator.

141. THE MADRAS BOARD OF REVENUE, MR. H. J. SPARKS, LIEUTENANT-COLONEL GRACE AND THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

agree with the Government of India that the Code should be amended in the direction indicated.

142. SIR CHARLES TURNER—

suggests that "except where the conduct of the guardian is impugned or his personal interest is in conflict with that of the minor, the Court should be required to recognise as guardian *ad litem*, if he be willing to undertake the duty, the person who, by the personal law, is entitled to the charge of the minor's property by a Court of competent jurisdiction or by the Court of Wards."

143. MR. JUSTICE WEST—

thinks no person wishing to sue as next friend on behalf of a minor should be subjected to any restriction other than those involved in proper rules as to costs.

He further thinks it might be explicitly provided that an administrator duly appointed should, as such, be a tutor capable of representing the minor in all litigation without further appointment.

144. MR. B. W. COLVIN—

sees no reason why there should be any separate application to be appointed guardian *ad litem* in cases where there is a certificated guardian. The certificated administrator should, he thinks, be *ex officio* guardian *ad litem* to the minor in his charge.

145. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

"agrees that if any amendment of the law is to be undertaken, it would be well to amend the Code of Civil Procedure so as to make it clear what is the status of a guardian appointed under the Minors' Act in respect of suits instituted on behalf of or against the minor whom he represents."

146. MR. H. MUSPRATT—

says Chapter XXXI of the Civil Procedure Code, "gives rise to no difficulty in the appointment of next friends or guardians *ad litem*, and nothing has yet come under notice so as to call for any modification of the provisions."

147. COLONEL W. HILL, COMMISSIONER OF COORG,—

writes:—

"Guardians who have obtained a certificate under the Minors' Act should be empowered to sue as such without the further intervention of the Court as required by section 443 of the Civil Procedure Code: at the same time an order of any Court appointing a guardian should not be held as giving any one who has not obtained a certificate any further authority over a minor."

[See also remarks by—

Mr. Plumer, in paragraph 6 of précis;

Sir Charles Sargent, in paragraph 13 of précis:

the Hon'ble Mr. Paul, in paragraph 14 of précis;

Muhammad Latif, in paragraph 29 of précis;

Umar Bakhsh, in paragraph 30 of précis;

Colonel E. P. Gurdon, in paragraph 31 of précis;

Mr. H. T. Rivaz, in paragraph 32 of précis;

Sardar Gurdial Singh, in paragraph 34 of précis;

Mr. Behari Lal Basu, in paragraph 36 of précis;

Mr. J. W. Chisholm, in paragraph 37 of précis;

Lieutenant-Colonel Grace, in paragraph 38 of précis;

the Recorder of Rangoon, in paragraph 40 of précis;

the Judicial Commissioner of British Burma, in paragraph 41 of précis; and

Mr. Wigram, in paragraph 370 of précis.]

Point VI.—Declaration as to powers of Guardians.

VI.—Whether the first clause of section 18 of Act XX of 1864 and Act XL of 1858 should not be amended so as to provide that a guardian by appointment or relationship should, when his title is

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point VI.—Declaration as to powers of Guardians.*)

declared by the Court, possess simply the same powers which he possessed before procuring a declaration of title, and that the order of the Court should have no effect except that of declaring his status; and further,

(*a*) *Whether, if the powers of a guardian who owes his status to the mere act of the Court are defined at all, they should not be defined in some way which would indicate that persons having transactions with him should bear in mind his representative character, and should not deal with him as they would if he were acting on his own account.*

148. The Government of India specially invited suggestions on the latter of these two points. The remarks contained in the following paragraphs which refer to this point are marked "[a]" on the margin.

149. MR. HUTCHINS—

observes that Madras Regulation V of 1804, section 21, clause fourth, gives no greater powers to a guardian appointed by the Court of Wards or the Zila Court than to other persons acting as guardian. As an indication of what the law should be on this point, he refers to his remarks noted in paragraph 71 of this précis.

150. MR. PLUMER—

says the legal powers and liabilities of guardians, whether acting by virtue of appointment, relationship or selection by the Court, are the same, and he sees no advantage in defining the powers of either class. Persons dealing with guardians may well, he thinks, be left to protect their own interests.

151. MR. W. WILSON—

writes as follows:—

"With reference to paragraphs 8 and 10 of the Resolution, I have to observe that where the instrument of appointment defines the powers of a guardian, he can deal with the property in accordance therewith without reference to the Courts. A guardian by relationship however and a guardian by appointment whose powers in respect of the property are not defined in the instrument of appointment are in precisely the same position as guardians appointed by the Court, and there is therefore no reason for relieving them of obligations—such as reference to the Court before sale—which are imposed on guardians appointed by the Court, nor of subjecting them to disabilities to which Court-appointed guardians are not liable. I think therefore that in the cases of guardianship by relationship and guardianship by appointment, where the instrument of appointment does not define the powers of the guardian, the order of the Court should operate merely as a declarator of status, but should, subject to the same conditions, confer on such guardians all powers possessed by Court-appointed guardians. I would further suggest that, where, in the case of guardianship by appointment, the instrument of appintment in the opinion of the Court restricts the powers of the guardian to the detriment of the minor, his powers should be extended in such manner as the Court may direct, the exercise of such extended powers by the guardian being subject to the provisions of section 18 [of Act XX of 1864]. From the operation of the second clause of this section all acts of guardians by appointment in pursuance of their instruments of appointment should be expressly exempted, but in all other cases the provisions of the section should in my opinion be strictly maintained."

152. MR. E. BARCLAY—

considers that, in cases where a Court decides that a person is entitled to a certificate of administration by virtue of appointment or by relationship, the same strictness should be required as to accounting for moveable property and as to the alienation or incumbrance of immoveable property, as in other cases excepting that in the former case, he would not require the administrator to furnish security. He would, however, expressely give the Court power to refuse a certificate for good cause shown.

He further thinks the duties of the manager (Collector) and the certificated administrator should be defined with as much particularity as possible, so as to prevent mistakes on the part of a Collector who might have to take temporary charge of a minor's estate, or on the part of others who might go wrong through ignorance.

153. MIR ANSAR-UD-DIN—

concurs in the Government of India's proposals. [*a*]

154. THE HON'BLE MR. O'SULLIVAN—

wrties:—

"The Act should define and limit the powers of persons to whom certificates of administration may be granted with regard to managing, charging or alienating the property of minors, and I think the sanction of the Court should be required in order to render valid any alienation of immoveable property of a value exceeding Rs. 500."

And again,

"I think it of the utmost importance either that the power of the administrator to deal with the property of the minor should be defined in the Act, or that the sanction of the Court should be required, so that third persons may be able to rely upon the title of the administrator and his capacity to bind the interests of the minor; and, in order that the interests of the minor may not be sacrificed, the Court should be at liberty to entertain objections by a friend or relative of the minor against any proposal or application by the administrator."

155. MR. J. W. HANDLEY—

thinks that if the powers of guardians are to be defined at all, the definition given in Acts XX of 1864 and XL of 1858, section 18, should be considerably harrowed. He suggests that the Courts might be left to decide in every case, in accordance with the well-established rule, whether the action of guardians has been consistent with the proper discharge of their duties.

156. MR. G. MUTTUSWAMY CHETTIAR—

agrees with Mr. Handley.

157. THE MADRAS BOARD OF REVENUE—

"would suggest whether it might not with advantage be enacted that, in dealing with the property of their wards, guardians (including those owing their status to the mere act of a Court) should have the rights and powers, and be subject to the duties and liabilities, of a trustee, as laid down in the Indian Trusts Act, II of 1882."

158. SIR CHARLES TURNER—

recommends that, where the guardian derives his powers solely from the act of the Court, those powers should be defined.

He further suggests provision being made that, except when the powers of a guardian are extended by the personal law of the minor or a special direc-

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

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tion of the creator of the trust, his powers of investment shall be limited by the provisions of section 20 of the Trustee Act [? Trusts Act, II of 1882.] He says that applications are not unfrequently made and granted for the issue of certificates to collect debts to the guardians of minors who, if of age, would be entitled to represent this estate of the deceased, and that there is at present no statutory provision authorizing this procedure.

159. MR. JUSTICE FIELD—

says section 18 of Act XL of 1858 has given rise to a considerable amount of litigation.

He thinks the expression "may exercise the same powers in the management of the estate as might have been exercised by the proprietor if not a minor" has not been happily chosen, and that the powers of a manager ought to be defined in other language. "According to English law," he says, "a lease made by a testamentary guardian to last beyond the minority of the ward was absolutely void as soon as the infant came of age. A Statute was subsequently passed (11 Geo. IV and 1 Wm. IV, cap. 64) under which an infant or his guardian might, with the sanction of the Court, accept renewals of leases and grant leases which should be valid, although they exceeded the period of the minority of the infant. The practice under this Act will be found in Chapter XLV of Mr. Daniell's Chancery Practice, and the principle of these Statutes deserves consideration in considering any amendment of Act XL of 1858."

He also observes that the clause authorising certificated guardians to collect and pay all just claims, debts and liabilities due to, or by, the estate of the minor would seem to indicate that a person who has obtained a certificate under the Minors' Act is entitled to collect debts without any further authority, but that this view has not always been taken by the Courts. He gives a reference to *In re Raisanissa Begum*, 2 B.L.R., 129.

(Please also see his remarks in paragraph 258, *infra*.)

160. MR. H. J. SPARKS—

considers that guardians who owe their status to the mere act of the Court "should have power similar to those exercised by managers appointed by the Court of Wards, and should have no power to alienate or encumber the minor's immoveable property, or to dispose of any valuable moveable property, without the orders of the Court. They should, in fact, be servants of the Court."

161. MR. DUTHOIT—

writes regarding the Government of India's proposal as follows:—

"I do not think this proposition feasible further than that the guardian, when transacting business on the part of the minor, might be required to [a] describe himself as guardian of the minor. I am unable to distinguish, as regards the management of a minor's affairs, between the status of a 'legitimate' and the status of a 'dative' guardian. Unless the action of the guardian, in the absence of fraud or collusion, fully binds the minor, the interests of minors would suffer."

In this connection he refers to some remarks of Mr. Justice Markby pointing to the duty of persons dealing with representatives to satisfy themselves that the latter are acting for the benefit of their principals.

162. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER OF THE NORTH-WESTERN PROVINCES AND OUDH—

says it is clear that a guardian by appointment or relationship should acquire no fresh powers to deal with the estate through the act of the Court in recognising his title; and that a guardian by appointment should, in consequence of such recognition, lose no powers already vested in him; and that in this respect section 18 of the Minors' Act seems to require amendment.

He thinks there is reason for supporting the suggestions made by Mr. Sparks (paragraph 160, *supra*). He continues:—"Another suggestion may be made, namely, that if it be made clear that guardians by appointment or relationship acquire no new powers through the act of the Court in declaring their status, guardians appointed by the Court should be permitted to exercise, with respect to the property concerned, all the powers which the owner might exercise if not a minor, subject to the limitation already provided in the second clause of section 18, and subject also to any further limitations which the Court might think fit to impose at the time of granting the certificate. If the proposal made by Mr. Justice Oldfield [see paragraph 363, *infra*] for the taking of bonds for due administration of the trust be adopted, the powers that would thus devolve on guardians would not be unduly large."

In regard to the second point mentioned in paragraph 10 of the Government of India's Resolu- [a] tion, the Lieutenant-Governor and Chief Commissioner thinks no special provision is necessary, as it would be the duty of all interested persons to ascertain for themselves the extent of the guardian's powers, and they can do so at very small cost.

163. MR. JUSTICE SMYTH—

writes:—

"I think the form of certificate given to a guardian should be prescribed by the Act, and it should indicate clearly the extent of the powers conferred on the guardian. Two forms might be prescribed,—one for guardians who owe their status to appointment or relationship, and the other for guardians who owe their status to the mere act of the Court. In this way any person dealing with a certificated guardian will have only to ask him [a] to produce his certificate, and will be able to ascertain from it the nature of the powers which he exercises."

164. LALLA MADAN GOPAL—

submits a list of restrictions of sorts which he thinks should be placed on the powers of guardians.

165. LALLA GIRDHARY LAL, PLEADER, OF DELHI,—

thinks one of those restrictions, *viz.*, that a guardian should not be allowed to arrange for a ward's marriage without the permission of the Court, should not be prescribed, because it would cause unusual and unnecessary litigation.

166. LALLA MOHAN LALL AND MIÁN ABDULLA,—

think it right that the order of a Court should, in the case of guardians owing their status to the mere act of the Court, operate no further than as a declaration of status.

167. COLONEL C. A. MCMAHON—

writes:—

"I would limit the effect of taking out a certificate of administration to a mere authoritative declaration of status, leaving it to the minor, on attaining his majority, to contest the validity of the guardian's acts on their merits if so disposed. I think it most undesirable to place any restriction on the power of the minor to impeach the conduct

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of the guardian (see Mr. Justice Melvill's Minute, page 3) on the ground that the latter took out a certificate or obtained the sanction of the Civil Court to his proposed alienation of immoveable property."

168. MUHAMMAD LATIF—

says the first clause of section 18 gives the guardian greater powers than are allowed him under either the Hindu or the Muhammadan law; he thinks this very objectionable, and suggests that "a certificated guardian should be placed on no better footing, on the mere strength of the certificate he holds, than that which he held originally, namely, when he held no such certificate, and the effect of the certificate should be no more than to declare his status;" and further:—

"As to the definition of the powers of guardians who owe their status to the mere act of the Civil Court, I think it enough to say that these powers are well defined in the Hindu and Muhammadan law, and no change is desirable."

He also thinks it should be expressly declared (1) that the guardian in dealing with the minor's property is acting merely in his representative capacity, and (2) that his acts shall be open to objection by the minor, (*i*) if the latter, on attaining the age of puberty, finds his interests were prejudiced by the guardian's acts, whether sanction was obtained to the alienation of his immoveable property or not, or (*ii*) on the ground of fraud or collusion between the manager and the dealer, or (*iii*) on the ground of some misrepresentation of facts within the knowledge of the purchaser at the time the sanction was obtained.

169. UMAR BAKHSH—

thinks it very desirable that the powers of guardians of all kinds should be defined. He argues that unless this is done confusion will result, with reference to the varying rules of Hindu law, Muhammadan law and custom and the powers supposed to be derived from the Court making an appointment; also, that it is desirable that guardians appointed by the Court should be definitively given wider powers, for the benefit of the minor, than they would have under either the Hindu or the Muhammadan law.

His reason for placing all guardians on the same footing in this respect is that different rules supplying to different classes of guardians seem unnecessary and would cause complications.

He thinks the powers given by clause 1 of section 18 of Act XL of 1858 should be maintained with this amendment, that the minor shall have the right, on attaining his majority to impeach the acts of his guardian on the ground of fraud or gross carelessness on his part.

He agrees with the Government of India that the powers of all guardians should be defined in some way which would indicate that they should not be dealt with as if they were acting on their own account.

170. COLONEL GURDON—

says "there is much truth in Muhammad Latif's arguments [paragraph 168, *supra*] against the retention of section 18 of Act XL of 1858, especially with reference to the different relative powers which a guardian of a minor and the minor himself, if he were not thus disqualified, possess."

171. MR. H. T. RIVAZ—

considers the first of the Government of India's proposals good, but doubts the advisability of attempting to carry out the second. He says the general principles of law requiring that in dealing with representatives special caution should be exercised are well understood, and he fears that "an attempt to exhaust this subject in a single section of a legislative enactment might lead to complications and difficulties instead of serving any useful end."

172. THE LIEUTENANT-GOVERNOR OF THE PUNJAB—

agrees with Mr. Rivaz. [a]

173. SARDAR GURDIAL SINGH—

thinks the powers conferred by section 18, clause 1 of Act XL of 1858 are too wide.

He suggests that a simple provision should be made to the effect that guardians "appointed under the Act" [? certificated] have, subject to the general control of the Court, power to do all acts necessary for the proper management and protection of the minor's estate.

174. MR. J. W. CHISHOLM—

writes:—

"It is no doubt important that transactions entered into by guardians in good faith should not be liable to be set aside except for fraud or other adequate cause. Section 18, however, confers on a certificated guardian practically all the powers of a proprietor. As in point of fact the guardian only represents the proprietor owing to his temporary disability as a minor, and as there are circumstances under which the action of guardians in regard to the property can be subsequently set aside, in my opinion the wording of the section should be altered in the sense suggested in paragraph 10 of the Government Resolution."

175. LIEUTENANT-COLONEL GRACE—

approves of the Government of India's proposals. He thinks the dealings of guardians with other persons in respect of the minor's property should be held to be those of a "trustee." [a]

176. THE RECORDER OF RANGOON—

sees no objection to the Government of India's proposals. [a]

177. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

writes:—

"There can, in my opinion, be no doubt that the first portion of section 18 of Act XL of 1858 should be amended. The status of the guardian and the powers vested in him should be much more clearly defined; and I cannot but think that section 8 of Chapter II, Tit. X, Lib. I, of the Belgian Code might with advantage be consulted on this subject."

178. THE CHIEF COMMISSIONER OF BRITISH BURMA—

considers clause 1 of section 18 might with advantage be amended as suggested by the Government of India.

179. MR. J. KNOX WIGHT—

writes:—

"With reference to paragraph 10 of the Resolution, I am of opinion that the first clause of section 18, Act XL of 1858, should be so amended as to make the powers of the certificated guardians equal to those of non-certificated ones. I think section 18 is quite exhausted, and does not require any amendment; but if it is to be

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(*Point VII.—Effect of Court's sanction to alienations.*)

interpreted in the way Mr. Justice Melvill has done,* words may be added to it to make the powers of certificated guardians co-extensive with those of guardians appointed by virtue of relationship, excepting only in this point that the latter have uncontrolled power, whereas the former must secure the sanction of the Court in some cases.

[a] "As regards the concluding portion of paragraph 10, I think there is no necessity for introducing any technical provision in the matter indicated therein. Although no such provision is contained in the existing Act, no difficulty is said to have arisen in practice."

180. MR. H. MUSPRATT—

thinks it is necessary to define what powers guardians should exercise, whether by virtue of a certificate of appointment or of relationship.

181. BABU KOYLAS CHUNDER GHOSE—

[a] considers it is necessary to make any provision such as that suggested in the second clause of paragraph 10 of the Resolution.

COLONEL W. HILL—

[a] concurs in the Government of India's proposals.

183. THE RESIDENT AT HYDERABAD—

concurs in the Government of India's proposal regarding the first point. He further makes the following suggestions:—

"The powers of a guardian who owes his status to the mere act of the Court should be especially defined at the time of his appointment, and should be limited to all acts necessary for the efficient management of the estate, the best lines to follow probably being those laid down for the duties and liabilities of trustees.† Any alienations extending beyond short leases, and any expenditure from the estate upon marriage or other ceremonies, should be prohibited except under the order of the Court."

[Please also see remarks by Mr. Justice West in paragraph 11£, *supra*.]

Point VII—Effect of Court's sanction to alienations.

VII.—Whether (if clause 2 of section 18 of Acts XX of 1864 and XL of 1858 is retained) it should not be made clear that the effect of the Court's sanction to sell, alienate, &c., any immoveable property is to give the purchaser a good title to such property, in the absence of fraud or collusion on his part.

184. The Government of India explained that if such is not the effect the sanction would, from the purchaser's point of view, afford little or no protection, and the minor's property would consequently be depreciated in value.

184A. MR. HUTCHINS, THE MADRAS BOARD OF REVENUE, MR. H. J. SPARKS, THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH, MR. H. T. RIVAZ, THE CHIEF COMMISSIONER OF BRITISH BURMA and THE RESIDENT AT HYDERABAD—

concur in the Government of India's proposal.

185. THE RECORDER OF RANGOON—

sees no objection to it.

186. MR. PLUMER—

thinks no hard-and-fast rule should be laid down as to the effect of the Court's sanction.

The mere sanction, without any declaration as to its effect, he says, is useful in affording a check on dishonest or incapable guardians; and he does not think it necessary to protect the alienee by declaring its effect, because the law as it stands affords him a sufficient guide.

187. MR. R. RY. A. L. V. RAMANA PUNTULU GARU, SUBORDINATE JUDGE OF MADURA,—

agrees with Mr. Justice West "that *bonâ fide* transactions affecting the immoveable property of minors, entered into by certificated administrators with the previous sanction of the District Court, should bind minors to the same extent as alienations made by the managing members of undivided Hindu families."

188. THE HON'BLE MIR HUMAYUN JAH, BAHADUR,—

agrees with the Government of India, but would say "in the absence of fraud (or collusion) on the part either of the guardian or of the purchaser."

189. SIR CHARLES TURNER—

writes as follows:—

"The 2nd clause of section 18, Act XL of 1858, does not confer on purchasers a title which the minor may not dispute. The sanction of the Court implies that the transaction as presented to it appeared to be for the interest of the minor. In order that the property of minors may not be depreciated by the difficulty of making as valid a title as can be made by an owner, it may be desirable to enact that where the Court is satisfied that the full market-value has been given for the property and [? that the guardian] has secured the investment of the price in certain specified securities, the title of the purchasers shall be defeated only on proof of fraud."

190. SIR CHARLES SARGENT—

thinks the title acquired by the alienee with the consent of the Court should be conclusive against the minor.

191. THE HON'BLE MR. PAUL—

discusses the case reported in I. L. R., 5 Cal., 363, quoted by Mr. Justice Melvill, which, he says, he does not understand to have decided that a sanctioned sale cannot be impeached on ordinary grounds. Mr. Paul "conceives that the object of clause 2 of section 18 of the Acts was to prevent any such dealings as those prohibited without sanction, and that the sanction is required for the benefit of the minor, and has no reference to the security of the purchaser." He "doubts the wisdom of discharging guardians from responsibility for such transactions or of protecting purchasers in them, unless the transactions are capable of bearing full scrutiny," and he "does not see how the depreciation of price in such a transaction can be avoided without accepting the risk of affirming transactions injurious to infants, and so doing more harm than any such depreciation in price can do."

192. MR. JUSTICE STRAIGHT—

thinks sanction should, except where it has been obtained by fraud or misrepresentation, be conclusive of the vendee's or mortgagee's title.

193. MR. B. W. COLVIN—

would do away altogether with the necessity for sanction (see his remarks in paragraph 119 of précis).

194. MR. DUTHOIT—

writes with reference to the Government of India's proposal as follows:—

"I would have a separate section in the Act enunciating this principle; but I would not con-

* See Home Department's Proceedings No. 168 for October, 1882, page 24.

† "Chapter III, Indian Trustees Bill." [? Indian Trusts Act, II of 1882.]

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(*Point VIII.—Extension of new law to Presidency-towns.*)

fute it to cases in which immoveable property is alienated with the sanction of the Court. I think that guardians should be allowed to dispose of moveables, and to make temporary alienations of immoveables, without the sanction of the Court, and to alienate immoveables permanently with the sanction of the Court; and that as regards both sets of cases the full authority of the guardian to bind the minor, except of course in the event of fraud and collusion, should be declared."

(Please also see his remarks in paragraph 161, *supra*.)

195 LALLA GIRDHARI LAL—

considers that "an alienation made by a guardian with the Court's permission should be held conclusively binding on the minor unless he proves fraud."

196. UMAR BAKHSH—

suggests that the sanction of the Court should have no more effect than this, that the transaction shall be presumed to be binding on the minor unless he proves that both the guardian and the purchaser were guilty of fraud, or that the sanction was obtained by misrepresentation which was known to the purchaser.

197. MR. BEHARI LAL BASU—

suggests that the enquiry made by the Court before giving sanction should not be a summary one; and that friends and well-wishers of the minor should be given an opportunity to oppose an application for sanction, and should be allowed to prefer an appeal against the sanction when given. With these safeguards, he would enact that the sanction makes the transaction vaild to all intents and purposes, and that the minor may impugn it, on reaching his majority, only on the ground of fraud or collusion.

198. LIEUTENANT-COLONEL GRACE—

approves of the Government of India's proposal, but would also insert "want of necessity" as a ground for disputing an alienation.

199. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

deprecates the amendment suggested by the Government of India. He writes:—

"The materials after the examination of which sanction is given are very unsatisfactory, and mistakes are often made. Looking to these circumstances, the title now given under the Act seems to me quite sufficient, and not too precise to be dangerous."

200. MR. H. MUSPRATT—

says the Court merely acts upon a one-sided statement or on proofs adduced by the applicant; and he would not, therefore, treat the sanction as conclusive evidence of the real necessity for the transfer when the ward, after attaining majority, desires to impeach the alienation.

Regarding the question of sanction, he further writes as follows:—

"I have found it a good plan to direct a Civil Court amin to make enquiries and to see that the creditors really do hold bonds, &c., duly executed by the previous owners.

"I think it would be advisable also to allow the District Judge to give his consent to the minor's representative jointly with the co-sharers creating under-tenures or giving long leases to parties wishing to employ capital on great industries such as tea, coffee, chinchona, quarrying, &c., on portions of an estate from which little or no profit is derived. The powers to the Judge on all these matters should be clearly defined, and he should have to sit with, say, two Assessors unconnected with either party when deciding such matters. Before any decision was given, the Judge and the Assessors should determine in what way publicity should be given to the applications to enable the reversioners or friends or any one to show cause against the said applications."

201. BABU KOYLAS CHUNDER GHOSE—

considers it unnecessary to make any such amendment as that proposed by the Government of India, because it is, he says, always understood that the Court's sanction will avail nothing if it was obtained by fraud or collusion.

[See also remarks by—

Mr. Justice Melvill, in paragraph 78 of précis;

Mr. Wigram, in paragraph 107 of précis;

Mr. E. Barclay, in paragraph 109 of précis;

Mr. J. W. Chisholm, in paragraph 174 of précis;

Mr. Justice Field, in paragraph 258 of précis; and

Khan Ahmed Shah, in paragraph 296 of précis.]

Point VIII.—Extension of new law to Presidency-towns.

VIII.—Whether, if it should be decided to consolidate the law for the whole of British India, the new Act should not be extended to the original local jurisdiction of the Presidency High Courts.

202. The Government of India thought this might be done, a section like section 150 of Act V of 1881 being inserted to abolish the old jurisdiction. One advantage would be that the Government would be placed in a better position than at present for dealing with the question of the local operation of a guardian's appointment, and this might be arranged for by the insertion of a section like section 59 of Act V of 1881, making the appointment of a District Court operative throughout the province and giving the High Courts power to make an appointment to hold good throughout the entire local extent of the Act. A further question would, it was said, arise in connection with this point, namely:—

(*b*) *whether the Courts in appointing guardians of property should not be given power to make appointments limited to particular property.*

The remarks contained in the following paragraphs which refer to this last point are marked "[*b*]" on the margin.

203. MR. E. BARCLAY—

thinks it might be advisable to make the new Act applicable "to the Presidency-towns and to the High Courts;" but says that if this is done some difficulty might be felt in declaring who should be the temporary manager of a minor's estate in a Presidency-town pending an application for a certificate of administration.

He suggests that a certificate of administration should be made to extend throughout the province in which it is granted, and where specially so ordered by the Court granting it throughout the local extent of the Act; the powers of a temporary manager (in the mufassal, the Collector), however, extending only over his own district.

He thinks the suggestion on point (*b*) should not be adopted, because questions might arise as to who should represent the minor on legal proceedings being taken in respect of property not comprised in the limited appointment. [*b*]

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(*Point IX.—Personal application of new law.*)

204. THE MADRAS BOARD OF REVENUE—

have nothing to urge against the proposal to extend the new Act to the Presidency-towns.

205. MR. JUSTICE WEST—

approves of that proposal.

206. MR. JUSTICE MELVILL—

approves of all the Government of India's proposals under this head.

207. THE HON'BLE MR. PAUL—

thinks the law for the Presidency-towns and the law for the Mufassal should only be assimilated if the former is found suitable for adaptation to the Mufassal, as, being the more comprehensive, it should in his opinion form the model for legislation.

Referring to sections 2, 4, 5 and 10, *et seq.*, of Act XL of 1858, he argues that there is no local limit to the operation of certificates under the present law He continues: "Consequently I do not see any objection to making the guardian's power extend generally to all the minor's property. It does not, of course, follow that the authority of the Court should be required to warrant dealing with a minor's property in all parts of the country; but where a guardian of the estate is required, I do not see why all the property of the minor in India, or at least in the Presidency, should not be in his charge. Any inconvenience which might arise from the property being widely scattered might be remedied by giving the Court power to limit its appointment to special property."

208. MR. JUSTICE STRAIGHT—

says the proposal to enact a provision similar to the proviso to section 59 of Act V of 1881 would obviate difficulties of a kind which have more than once arisen in the North-Western Provinces.

209. MR. H. J. SPARKS—

approves of all the Government of India's proposals under this head.

210. MR. B. W. COLVIN—

approves of the proposal to enact a provision similar to the proviso to section 59 of Act V of 1881.

211. MR. DUTHOIT—

considers there can be no objection to the proposal that a District Court certificate should hold good for a province, while applications for a certificate to hold good for the whole of British India should be made to the High Court.

212. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

approves of the proposal to insert a section like section 59 of Act V of 1881, and also of the proposal on point (*b*).

213. MR. BEHARI LALL BASU—

considers it desirable that the special procedure of the Presidency-towns should be abolished and the proposed Act made applicable to them as well as to the Mufassal.

In regard to point (*b*), he says there may be instances in which a provision like that proposed by the Government of India may be required, but he thinks it preferable that one person only should have the responsibility of managing the entire estate of a minor.

214. THE RECORDER OF RANGOON—

sees no objection to any of the Government of India's proposals under this head. [*b*]

215. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

sees no objection to the extension of any general consolidated Minors' Act to the Presidency-towns, or to the proposal on point (*b*). [*b*]

216. MR. J. KNOX WIGHT—

considers the Government of India's proposals a move in the right direction. [*b*]

[See also remarks by—

Sir Charles Turner, in paragraph 221 of précis;

the Judges of the Calcutta High Court, in paragraph 226 of précis;

the Hon'ble Mr. O'Sullivan, in paragraph 248 of précis;

Sir Charles Sargent, in paragraph 254 of précis; and

Lalla Madan Gopal, in paragraph 351 of précis.]

IX.—Whether the proposed new Act should not be confined to Hindus, Muhammadans and Buddhists, and other persons who have definite personal laws, and the European British Minors' Act, XIII of 1874, made applicable to all other classes of persons and its operation extended to the whole of British India, including the Presidency-towns, the jurisdiction of the High Courts in respect of European British minors being abolished. Point IX—Personal application of new law.

217. The Government of India's views on this question were stated as follows:—

"As regards the classes of persons to whom the proposed Act should apply, it may be observed that the division which the law at present makes into European British subjects on the one hand, and all other persons on the other, involves the continuance of a state of things which is now passing away, and appears, moreover, to be based on no intelligible principle. It is not clear, for instance, why an Eurasian, who, though not a European British subject, is for all practical purposes on exactly the same footing, should be placed in the matter of guardianship in a different position from a European British subject. In this matter the only true distinction appears to be that recognized in the Succession Act, namely, between such persons as Hindus, Muhammadans and Buddhists, who have definite personal laws which the Government are bound to respect, and other persons who possess no such laws. From this point of view it appears to the Governor General in Council that the present opportunity might also conveniently be taken to make Act XIII of 1874 (the European British Minors' Act, 1874) applicable to the latter class of persons in the same way as the Succession Act is made applicable to them. If this were done, Act XIII of 1874 might be extended to the whole of British India, including the Presidency-towns, the jurisdiction of the High Courts in respect of European British minors being at the same time abolished. The proposed new Act would then be applicable to Hindus, Muhammadans, Buddhists and other persons exempted from Act XIII of 1874, and the law in regard to minors would be rendered simple and complete."

218. MR. W. WILSON—

approves of these proposals.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Point IX.—Personal application of new law.*)

219. MR. E. BARCLAY—

thinks the new Act should apply to all minors being British subjects and possessed of property in British India, except infant members of an undivided Hindu family possessing merely an undivided share in the family property. "It would," he continues, "probably be thought advisable to incorporate some of the provisions of the European British Minors' Act, 1874, in the new Act, but I think, as a general rule, the certificated administrator should be appointed guardian of the minor's person. It would not, I should say, be desirable to appoint the temporary manager guardian of the person."

Mr. Barclay raises a question as to the power of the Indian legislature to abolish the jurisdiction of the High Courts over infants.

220. THE MADRAS BOARD OF REVENUE—

concur with the Government of India.

221. SIR CHARLES TURNER—

writes as follows :—

"An Act similar to Act XIII of 1874 might be framed, applicable to all Courts, including the chartered High Courts, and dealing with minors of all creeds and races, provided that it does not abridge any of the useful powers at present possessed by the chartered High Courts, that it contains a declaration that in the selection of guardians regard shall be had to the personal law of the minor, and that in making provision for the custody of the property of the minor who is a member of an undivided Hindu family, the Court shall, except in a case in which it is established that the interests of the minor have been actually imperilled, abstain from interference with the powers of the managing member.

"The object of the law is to provide for the maintenance and education of the minor in a manner suitable to his means and position and to protect his property, and the same measures which would secure these results in the case of Europeans, Eurasians and Native Christians would ordinarily be appropriate to the case of persons of other races or creeds."

222. MR. JUSTICE WEST—

writes :—

"A new Act should, I think, extend to all classes of the community. I cannot see why this scope might not be given to it. It would take for granted that under different laws there were natural or legal guardians, and proceed on that basis to prescribe their general duties and define their rights."

223. SIR CHARLES SARGENT—

thinks that as regards the separate property of a Hindu minor, and all the property of other minors "the general provisions of the Act of 1864 might be retained and extended to Europeans as well as natives." (His suggestions for the amendment of the Act in detail are noted elsewhere).

224. MR. JUSTICE MELVILL—

approves of the Government of India's proposals.

225. THE HON'BLE MR. PAUL—

does not see that any distinction need be made between the various races, except as to the persons to be selected or recognized as guardians.

226. THE JUDGES OF THE CALCUTTA HIGH COURT—

concur in the views of the Government of India, and, if they are carried into effect, consider there would be no objection to extending the provisions of both Acts (that for Hindus, &c., and that for all other persons, including European British subjects) to the Presidency-towns, care being, however, taken to preserve any special jurisdiction at present vested in the High Courts.

227. MR. JUSTICE OLDFIELD—

writes as follows :—

"I think Act XIII, 1874, might, as suggested in the Resolution of the Government of India, be made applicable to [? persons other than] Muhammadans, Hindus and Buddhists in the same way as the Succession Act, with such modifications as may appear called for.

"The powers in section 16 [of Act XIII of 1874] conferred on guardians would be generally too restricted, and I see no object in requiring the Court's sanction to alienations, except in the cases referred to in paragraph 8 of the Resolution."

228. MR. JUSTICE STRAIGHT—

considers the principle put forward by the Government of India is a sound one.

229. MR. B. W. COLVIN—

thinks the Government of India's proposals correct.

230. MR. W. DUTHOIT—

contests the views expressed by the Government of India, as to the propriety of having separate enactments for Hindus, &c, and for Europeans and the like. He sees no necessity for making any such classification, and disapproves of the proposal on the ground of its being open to the objections attending "class legislation." He advocates the enactment of a single general law applicable to all classes; and he suggests that it should be based on Act XIII of 1874 (see paragraph 291, *infra*).

231. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

says the proposals made by the Government of India require full and mature consideration.

In regard to the proposed extension of Act XIII of 1874, he writes :—

"The special jurisdiction of the chartered High Court of these provinces over European British subjects seems to stand thus. Section 12 of the Letters Patent of the Court confers on it the like power and authority with respect to the persons and estates of infants within the North-Western Provinces as that which is exercised in the Lower Provinces by the Calcutta High Court. It is believed that the Calcutta High Court exercises over infants the same jurisdiction that was conferred on the Supreme Court by section 25 of the Letters Patent of 1874. This section authorised and empowered the Supreme Court to appoint guardians and keepers for infants and their estates according to the order and course observed in England. The Lieutenant-Governor is aware that Act XIII of 1874 is in most respects a reproduction of the law of England regarding minors, and he recognises the great advantage of having that law codified in a readily accessible form. The advisability of conferring on the District Courts a jurisdiction concurrent with that of the High Court over European British minors may, perhaps, also be conceded. But if, in the exercise of their jurisdiction, the chartered High Courts now have regard to domicile in determining the period of

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nonage and other matters, Sir Alfred Lyall would, in the event of the proposed legislation being proceeded with, preserve the existing practice of those Courts, and extend it, in the case of European British minors, to those portions of British India to which Act XIII of 1874 now applies."

In regard to the proposal to pass two separate Acts, *viz.*, one for Hindus, &c., and one for Europeans and the like, he writes :—

"The division of the population into two classes—(*a*) those possessed of definite personal laws which the Government is bound to respect, and (*b*) other persons who possess no such laws—seems open to objection. It is true that this division was adopted in the case of Act X of 1865 and Act V of 1881; but the subject now under discussion and that covered by the two Acts just named differ in some important respects, and in any case it would seem that the appropriateness of the proposed division should be decided on its merits, and that it should not be adopted merely on the ground of analogy. It would seem to be considered that European British subjects, Eurasians, Pársís, Jews and the other miscellaneous classes of persons to whom Act V of 1881 [? X of 1865] applies have no definite personal laws which the Government is bound to respect. But it has already been shown that European British minors have a definite personal law, *viz.*, the law of England; and it seems hardly appropriate to place these persons in the category of those who have no personal laws which the Government is bound to respect. Besides, the distinction, as now worded, seems likely in practice to offend the susceptibilities of some of those classes of persons who are considered to have no personal laws that the Government is bound to respect, since it might create an impression that the Government regards itself as bound to respect the special laws of Hindus and Muhammadans more than those of Europeans and other classes of the community. If a measure were passed on the lines now indicated, it would be difficult to secure to any of the classes affected the enjoyment of their own personal law, by the insertion in the contemplated Act of a section similar to section 332 of Act X of 1865, which empowers the Governor General to exempt any race or tribe from the operation of the Act. Such a section might, indeed, be used to exempt a race or tribe which might be found to have a definite personal law which the Government was bound to respect; but its effect would be to bring the tribe so exempted under the second Act referred to in paragraph 13 [of the Resolution], which would apply primarily to Hindus, Muhammadans and Buddhists. For these reasons it seems desirable that the distinction recognized in the Succession Act should be not applied in the present instance without a full consideration of all the consequences that may flow from it."

232. COLONEL C. A. MCMAHON—

approves of the proposals of the Government of India.

233. SARDAR GURDIAL SINGH—

approves of the proposed class distinction.

234. LIEUTENANT-COLONEL GRACE—

thinks that "if it should be decided that a general consolidated Act is necessary for the protection of the person and property of minors throughout British India, it should be on the lines of the Succession Act, and apply to Hindus, Muhammadans, Buddhists, &c., as mentioned in paragraph 13 of the Resolution."

235. THE RECORDER OF RANGOON—

sees no objection to the Government of India's proposals.

236. THE JUDICIAL COMMISSIONER OF BRITISH BURMA—

thinks it would be in every way desirable to carry out the proposals made by the Government of India.

237. THE CHIEF COMMISSIONER OF BRITISH BURMA—

thinks it would doubtless be desirable to carry out the Government of India's proposals if any consolidated Act is passed.

238. MR. J. KNOX WIGHT—

considers the Government of India's proposals a move in the right direction.

239. COLONEL W. HILL—

agrees with the Government of India as to following the precedent of the Succession Act.

240. THE RESIDENT AT HYDERABAD—

agrees with the Government of India.

[See also remarks by—
the Hon'ble Mr. O'Sullivan, in paragraph 248 of précis; and
Mr. R. J. Crosthwaite, in paragraph 273 of précis.]

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241. In the following paragraphs (242 to 282) are noted the remarks and suggestions of Local Governments and officials relative to the proposed consolidation of the law relating to minors, and to the necessity for new legislation on this subject at the present time.

242. MR. H. WIGRAM—

considers it highly desirable to consolidate the law. He mentions that the Madras law is contained in the following enactments:—

Madras Regulation V of 1804,
Madras Regulation X of 1831,
Act XIX of 1841,
Act XXI of 1855,
Act XVI of 1858,
Act XXVII of 1860, and
Act IX of 1861.

In regard to some of these enactments he considers it desirable that amendments should be made as indicated below:—

He refers to a decision of the Madras High Court that under Madras Regulation X of 1831 the Civil Courts had no jurisdiction to appoint a guardian where the Court of Wards might take an estate in hand but did not do so; and suggests "that in the case of all large estates, whether they pay revenue to Government or not, the Court of Wards should continue to exercise jurisdiction, and that in smaller estates, where the minor is the sole heir, or where a distinct branch of an undivided family becomes, by the death of its head, represented by minors only, the District Court should have jurisdiction to appoint a guardian, and that preference should be given to the mother, if of sufficient capacity;" and further, as regards the custody of minors, "that the Courts should follow the same rule in the case of those subject to the Succession Act as in the case of those not subject to it, namely, that the Court should do in every case what it considers best for the interests of the minor."

He says Act XIX of 1841 is very rarely used because application under it must be made within six months.

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And in regard to Act IX of 1861, he says:—

"Applications under this Act have been made to me regarding the custody of Muhammadan children whose parents were dead and disputes had arisen between the paternal and maternal relatives. I always felt a difficulty in deciding whether I ought to follow the Muhammadan law, or refuse to appoint as guardians persons excluded by section 19 of Regulation V of 1804."

243. MR. HUTCHINS—

gives a list of the enactments in force in the Madras Presidency regarding minors.

244. MR. PLUMER—

also gives a list, and says his experience has been that the law in Madras (so far as it refers to minors not subject to the Court of Wards) has been practically inoperative.

He agrees that a case has been made out for the amendment of the Bombay and Bengal Acts.

245. THE HON'BLE MIR HUMAYON JAH—

approves of the proposal to consolidate and amend the law.

246. MR. E. BARCLAY—

approves of the proposed consolidation and re-enactment of Madras Regulation V of 1804, Act XL of 1858, Act XX of 1864 and Act XIII of 1874.

247. MIR ANSAR-UD-DIN—

quotes the Regulations and Acts in force in Madras, and says he does not think they require any amendment. If the proposed consolidation is carried out, he recommends that the Madras law should not be modified during the process.

248. THE HON'BLE MR. O'SULLIVAN—

thinks "an Act, founded upon Act XL of 1858, might be applied to the whole of British India and to all classes of minors, except in cases where the Court of Wards has intervened."

249. MR. J. W. HANDLEY—

doubts whether any amendment of the Regulations (which he cites) in force in Madras is required. He thinks all that is necessary would be a short Act giving the Courts power to appoint guardians for all minors for whom none have been otherwise appointed (*i. e.*, those who have not been taken in hand by the Court of Wards), and this only in the event of the High Court, to whom the question had been referred, deciding that Madras Regulation X of 1831 cannot be construed so as to give this extended power as it stands.

He deprecates any legislation which would further facilitate the interference of the Courts with the action of guardians by relationship or appointment, thinking it best, for reasons which he gives, that suits against them should not be encouraged.

250. MR. P. SREENAVASA RAO, JUDGE OF THE MADRAS COURT OF SMALL CAUSES,—

agreeing with Mr. Handley, "deprecates any legislation which would unnecessarily interfere with the liberties of the people," and shows that the policy of the Madras legislature has always been to avoid such interference. On the question of the power of the Courts to appoint guardians for minors who have not been taken in hand by the Court of Wards, he quotes authorities showing that the Courts have full powers in such cases, but he would not object to a short Act declaring the law.

251. MR. G. MUTTUSWAMY CHETTIAR—

cites the law in force in Madras, and says he considers further legislation unnecessary. The only point in which that law fails, he says, is that it does not reach small estates; but this is unavoidable, both because of the peculiar constitution of Hindu families, and because the Collectors are already overworked.

He agrees with Mr. Handley in thinking a short declaratory Act might be passed of the nature, and in the circumstances, noted in paragraph 249 of this précis.

252. THE MADRAS BOARD OF REVENUE—

say the necessity for amending the law relating to minors *and other disqualified persons* in the Madras Presidency has long been acknowledged, and that some years ago a Bill was drawn up to introduce the requisite amendments, among which were some of those suggested in the Government of India's Resolution. The Board concur with the Government of India's proposal to consolidate the whole law for British India, and suggest (paragraph 8 of their Proceedings) that the new Act should extend not only to minors but to all persons incapacitated by sex, infirmity or imprisonment from managing their property.

They note that on the passing of the new Act the law relating to the Madras Court of Wards will require re-casting; they remind the Government of India that the Madras law relating to minors is contained in the following enactments:—

Mad. Reg. III of 1802	Act XIX of 1841
Mad. Reg. V of 1804	Act XXI of 1855
Mad. Reg. X of 1831	Act XIV of 1858,

and Act IX of 1861;

and they suggest that care should be taken to declare in the new Act that its provisions shall not extend to such estates, under the jurisdiction of the Court of Wards, as the Court of Wards may think proper to take under its protection.

253. SIR CHARLES TURNER—

gives a review of the law in force in the Madras Presidency, showing (1) that it is, as interpreted by the Courts, defective in that it leaves certain minors without adequate protection, and (2) that it fails to provide sufficiently for the representation and protection of minors whose property becomes the subject of litigation. His remarks on the second of these points will be found abstracted in other parts of this précis: his remarks on the first point show—

(*a*) that "the Civil Courts in the Madras Presidency have, in the matter of guardianship, such general powers as are inherent in Courts which have jurisdiction to try all suits of a civil nature except where such jurisdiction is limited by enactment, and the District Courts have the powers conferred on them by the Regulations and Acts;"

(*b*) that under a High Court ruling of 1871, section 3 of Madras Regulation X of 1831 is held to give no power to appoint guardians for minors whose estates the Court of Wards could have, but has not, taken under its management, or for minors entitled as co-parceners to estates paying revenue or rent directly to Government;

(*c*) that under section 3 of Madras Regulation V of 1804 the Local Government may decline to pass an order bringing an estate under the Court of Wards, although the Collector has made a report with a view to such an order being passed, and that it is obviously unreasonable to expect the Local Government to pass such an order in the case of

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Raiyátwari estates (supposing the term "property" to include such estates), while there are other cases, too, in which the Local Government might, for excellent reasons, decline to pass such an order.

Sir Charles Turner says it cannot de desirable that in the cases mentioned the persons and property of minors should be left without protection, and that the necessity of affording protection has been shown by experience. He suggests, as regards estates held in co-parcenary, that, excepting only in those cases where the co-parcenery consists of a father and a son, the District Court should have power to appoint guardians where the Collector has satisfied himself of the necessity for intervention.

He also points out that Act IX of 1861 makes no express mention of the *property* of minors, and does not empower the Court to confer power to deal with such property on the person whom it recognizes or appoints as guardian; also that it is defective in that it makes no express provision for the supersession or removal of a guardian once appointed. In regard to the first of these two points, he suggests that, in view of possible misapprehensions in the past as to the effect of recognizing or appointing a guardian, it may be desirable that in the contemplated legislation the acts of such guardians done *bonâ fide* in the interests of minors should be validated; and further that, in any case, it is obviously desirable that there should be an express declaration of the powers which, independently of the personal law of the minor, the Court is authorized to confer on a guardian in respect of a minor's property; also that the Court should have power to interfere and appoint guardians of the persons and managers of the property of minors either on the report of the Collector or of its own motion in cases subject to the jurisdiction of the Court of Wards in which the Government has declined to authorize the Court of Wards to take charge of the estate, or in other cases where there is no guardian or manager, and it is proved to be desirable in the interests of the minor that an appointment should be made.

In view of the defects mentioned in the foregoing clauses of this paragraph and the abstracts from his Minute noted in other paragraphs of this précis, Sir Charles Turner concurs in the proposal to consolidate and amend the law. He mentions that the Madras High Court in November, 1871, advised the Government of Madras that it would be desirable "to repeal the old enactments and by new legislation provide for the proper guardianship of minor proprietors and the management of their property," and further points out that "in view of the circumstances that the Regulations and Acts dealing with minors and their property are so numerous, and that the High Courts have in addition to administer the written and unwritten law of England in the case of European minors, the Indian Law Commission of 1879 indicated this branch of the law as specially calling for codification."

254. SIR CHARLES SARGENT—

thinks it highly desirable that there should be but one Act regulating the care and administration of the persons and property of all minors throughout British India.

He considers that an Act framed on the lines indicated in his Minute, with such other provisions as the English law may suggest, would be a valuable addition to the Indian Codes.

255. THE HON'BLE MR. PAUL—

thinks it would be desirable to assimilate the law for Bengal and Bombay, but cannot advise as to Madras. The fact that the Mitakshara law prevails in that Presidency should, he suggests, be taken into consideration.

Further on he remarks that Acts XL of 1858 and XX of 1864 are "obviously open to great improvement, both in language and substance."

256. MR. T. T. ALLEN—

says the points taken up in Mr. Justice Melvill's Minute of August, 1881, in every instance refer to matters wherein either the Bombay Act differs from the Bengal Act or the circumstances of Bombay differ from those of Bengal.

The Bengal Act, he says, works well and is now well known and understood, and he can see no good reason for interfering with it. He adds, "I think nothing can be so mischievous as, from a hankering after symmetry, to repeal a good law against which no complaints have been made, in order to re-enact it with some slight variations that are certain to escape notice by parties concerned, and thus lead to future loss and confusion." He is therefore opposed to any change being made in the law.

257. THE GOVERNMENT OF BENGAL—

concur generally in the views expressed by Mr. Allen, and see no sufficient reason for interfering with Act XL of 1858.

258. MR. JUSTICE FIELD—

thinks it desirable that an amended and consolidated Act should be passed for the whole of (British) India, and recommends that the provisions of Act IX of 1861 be incorporated. Speaking generally, he considers the following are the main lines upon which the new Act ought to framed:—

"*First.*—All persons dealing with the property of minors without any certificate obtained from the Civil Court should be left to the general law applicable to persons of their class and to those transactions into which they may have entered. It would be extremely difficult and, to my mind, dangerous to attempt to reduce to propositions in the form of sections of an Act those principles applicable to Hindus, Muhammadans and other classes in India which regulate the power of dealing with property belonging to minors or in which minors have an interest, in the numerous cases in which questions as to the extent of that power may arise. Take, for example, the case of alienations made by the guardians of minors in cases of alleged necessity (see this question discussed in the Privy Council case above referred to—*Doorga Prosad* v. *Kesho Proshad Singh*). The question under what circumstances such alienations are justified has been repeatedly before the Privy Council (see the case of *Hunooman Proshad Panday* v. *Mussamut Babooi Munraj Koonwari*, 6 Moore's I. Ap. Cases, 393), and has been repeatedly in various forms before the High Courts in India. It would be extremely difficult to formulate in a single proposition or series of propositions the various cases in which alienation on the ground of necessity can be justified or otherwise."

"*Secondly.*—It should be enacted generally that persons dealing with the estate of an infant and taking the profits thereof are responsible at the suit of the infant suing through a next friend while under age, or in person after attaining majority, such responsibility being determined according to

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the law applicable under section 24 of the Bengal Civil Courts Act, VI of 1871, and the corresponding provisions in force in other parts of India. 'If a man,' says Mr. Daniell, 'intrudes on the estate of an infant, and takes the profits thereof, he will be treated as a guardian, and held responsible for the same to the infant in a Court of Equity.' (Daniell's Chancery Practice, Vol. II, p. 1204). In those cases in which a certificate had been obtained under the provisions of the Act the person who obtained such certificate should of course be under the general control of the Court; should be bound to give security, if the Court saw fit to require it, and to render an account. His powers of leasing might be regulated by statutory provisions, while his power of alienation should be subject to the direction of the Court to be obtained in a summary way. In this latter case, his act, so far as third parties were affected, ought to be valid except in cases of fraud or collusion."

259. MR. JUSTICE TOTTENHAM—

agrees with Mr. Justice Field that it is desirable to pass a consolidated Act for the whole of (British) India.

260. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectivey) consider Act XL of 1858 is "in several respects defective; that its language is, in some instances, indistinct; and that legistation is desirable for the purpose of amending the Act, bringing it into more complete accordance with Chapter XXXI of the Civil Procedure Code, and placing the whole law on the subject on a clearer and better defined footing."

They also "concur with the Government of India in thinking that the opportunity might advantageously be taken to consolidate the Acts and Regulations which at present govern the subject in various parts of the country in a single enactment applicable to the whole of British India."

261. SIR R. STUART—

urges that Act XL of 1858 should be left alone.

262. MR. JUSTICE STRAIGHT—

considers it would be highly desirable to consolidate the law relating to minors for the whole of British India in one well-considered and comprehensive Act.

263. MR. H. J. SPARKS—

approves of the proposal to consolidate the law for the whole of British India.

264. MR. W. DUTHOIT—

thinks it desirable that the law for the whole of British India should be consolidated if, as appears to be the case, that course is practicable.

[For his suggestions regarding such consolidation, see paragraph 291, *infra*.]

265. MR. JUSTICE SMYTH—

is not aware that any practical difficulty has arisen in the Punjab in the working of Act XL of 1858. The Act is not, however, much used, he says, in that Province.

266. MUHAMMAD LATIF—

agrees that Act XX of 1864 requires amendment.

He is "sure the country will hail with satisfaction and gratitude a consolidated Minors' Act extending over the whole of British India and embodying the provisions of Acts IX of 1861, XXVII of 1860 and IX of 1875, in regard to each of which much uncertainty prevails at present."

267. UMAR BAKHSH—

agrees that Act XX of 1864 requires amendment.

He suggests that the new Act should incorporate Acts IX of 1861 and IX of 1875 (Majority), as well as Act XL of 1858.

268. COLONEL GURDON—

thinks the time has arrived for a general consolidated Act applicable to the whole of British India.

He thinks Umar Bakhsh's suggestion to include Act IX of 1875 (Majority) in the new enactment is worthy of consideration.

269. MR. H. T. RIVAZ—

writes:—

"So far as I know, no serious inconvenience has been felt in the Punjab with reference to the working of Act XL of 1858. The reported cases under the Act are, so far as this province is concerned, few in number, and disclose no particular difficulties experienced in applying the Act; and the result of my experience, so far as it goes, is that the machinery of the Act is very seldom set in motion in this province, and when it is set in motion amply meets the requirements of the case. The proposal therefore to extend the application of the Act and confer wider powers on the Court appears to me, so far as the Punjab is concerned, to be unnecessary."

270. THE FINANCIAL COMMISSIONER OF THE PUNJAB—

writes:—

"The general tendency of the proposed legislation is to make the relation of guardian and minor much more legal than it has hitherto been in the Punjab, and to give occasion to greatly increased resort to the Civil Courts for certificates of administration. The Financial Commissioner thinks that both these changes are neither required nor desirable in the Punjab. The present system works easily, gives little trouble either to the people or the Courts, does not, Colonel Davies believes, give occasion to any large amount of litigation, and appears to be generally acceptable. In many cases it may work as an actual family bond.

"There seems to the Financial Commissioner, therefore, little necessity for fresh legislation, but, if a new enactment be determined upon, it should be merely one declaring and making clear the present practice, and not innovating upon or making it more stringent."

271. THE LIEUTENANT-GOVERNOR OF THE PUNJAB—

writes:—

"The alterations which are suggested by the learned Judges of the Bombay High Court, and discussed in the Resolution under reply, would have a tendency to bring the question of guardianship and minority more under the control of the Civil Courts than is at present the case in the Punjab. * * * It will be seen that the authorities who have been consulted are generally in favour of maintaining the practice which now exists in the Punjab. No difficulty or inconvenience has hitherto been experienced in working the provisions of the existing law, and the Lieutenant-Governor, concurring in the opinions which have been offered, would prefer to leave guardianship, its duties and responsibilities, to be controlled and worked in accordance with custom and public feeling, rather than

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to bring it under the active interference of the Civil Courts. So long as negotiations regarding the property of minors are conducted in accordance with genefal principles of equity, there is great advantage in their being carried on out of Court. Sir Charles Aitchison understands that this is practically the view expressed in paragraphs 5, 7 and 8 of the Resolution, and it will be seen that Mr. Justice Smyth and the Government Advocate would go even further and would not allow the alienation of the immoveable property of a minor by a certificated guardian to be voided otherwise than reason of bad faith."

272. SARDAR GURDIAL SING—

agrees that Act XX of 1864 requires amendment, though he does not concur in all the amendments proposed by the Judges of the Bombay High Court.

He also thinks Act XL of 1858 stands in need of revision.

He suggests that the new law should consolidate Acts XL of 1858, XX of 1864, IX of 1861, and IX of 1875.

273. MR. R. J. CROSTHWAITE—

considers "the law might with advantage be consolidated in the way proposed by the Government of India."

274. MR. L. NEILL, OFFICIATING COMMISSIONER, NAGPUR DIVISION,—

writes:—

"The Law [Act XL of 1858] appears to me to work well, and I am not prepared to advocate any change in it.

"With regard to acts done by guardians or representatives of minors, our Courts at present act on the equitable understanding that third parties, who profit by their dealings with minors, shall strictly satisfy themselves that the guardians or representatives act *bonâ fide* and with due respect to the minors' interests."

275. MR. BEHARI LAL BASU—

says "Act XL of 1858 is not complete by itself and the reported cases tend to show that the Act needs amendment;" and again, "I am inclined to think the Act needs amendment. It is expedient and desirable that a general consolidated Act be passed for the whole of British India."

276. MR. J. W. CHISHOLM—

writes:—

"I agree in the view that the Act [XL of 1858] is defective, and that amendments should be introduced to remedy defects pointed out which in practice have been found to exist. The best course, as suggested, is to have a general consolidated revised Minors' Act applicable to the whole of British India."

277. LIEUTENANT-COLONEL GRACE—

agrees that the defects pointed out by Mr. Justice Melvill in Act XX of 1864 (and Act XL of 1858) should be amended.

278. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

approves of the proposal to consolidate the various enactments relating to minors.

279. THE CHIEF COMMISSIONER OF BRITISH BURMA—

says no practical necessity has shown itself in British Burma for any amendment of the law, and that, in fact, the law is very little used there.

280. Mr. J. KNOX WIGHT—

considers it very desirable to pass a consolidated Act remedying defects and bringing the whole law relating to minors within the scope of one enactment. The new Act should, he suggests, embody Act IX of 1861 and the enactments relating to Courts of Wards, as well as other enactments dealing with the subject of the rights and duties of guardian and ward.

281. MR. H. MUSPRATT—

considers it desirable that the existing laws should be re-enacted, with the necessary modifications, in the form of a general consolidated Act applicable to the whole of British India.

282. BABU KAYLAS CHUNDER GHOSE—

remarks:—"The defects pointed out in Act XX of 1864 no doubt require amendment."

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283. In the following paragraphs (284 to 297) are noted suggestions of a general kind for the amendment of the law and suggestions which are not referred by their authors to any particular section of any Act, on points not directly connected with the Government of India's proposals.

284. THE HON'BLE MR. O'SULLIVAN—

suggests that "upon the minor attaining majority, the administrator should be entitled to be discharged from his liabilities, acts of fraud, subsequently discovered, being excepted."

285. SIR CHARLES TURNER—

suggests that, in the new Act, the Courts should be given a discretion to appoint more guardians of a minor's property than one, where the circumstances of the case so require.

286. THE GOVERNMENT OF BOMBAY—

submit correspondence dating from 1865 relative to a proposal to amend the Act by constituting the Taluqdari Settlement officer in Gujarat a Court of Wards. It is requested that the Government of India should consider this question in connection with the contemplated legislation.

287. THE BOARD OF REVENUE, LOWER PROVINCES,—

bring to notice the following point which they say has practically hampered the free exercise of a discretion which the law intended to leave to the Court of Wards as to taking properties under charge of the Court, and which they suggest should be cleared up when the new Act is framed:—

"Whether, under the provisions of Act XL of 1858, a Judge has the power to appoint a manager of the property of a minor and a guardian of his person, if the estate of the minor consists in whole or in part of land or any interest in land (as mentioned in the repealed section 12* of the Act), or whether (if the property is not such as to fall within the purview of section 10 of the Act) the Judge has no other alternative than to apply to the Court of Wards to take charge of the person and property of the minor under section 10 of the Bengal Wards Act, 1879; and whether in the event of the Court of Wards refusing to take such charge, the Judge is powerless to make other arrangements for the management of such property."

It is stated that the Legal Remembrancer expressed the following opinion on the point:—

"The last sentence of section 2, Act XL of 1858, placing the property of minors under the protection

* Repealed in the Lower Provinces by Bengal Act IX of 1879.

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of the Civil Courts imposes on those Courts the necessity of making provision for the management of that property when properly applied to."

288. MR. JUSTICE FIELD—

brings to notice a case illustrating the difficulty mentioned by the Board of Revenue.

[In regard to a similar difficulty felt under the Madras law, see paragraphs 242 and 249 to 253 of précis.]

289. MR. BIHARI LAIL BASU—

suggests that a clear distinction should be made between estates which may be taken up by the Court of Wards and estates for which a guardian may be appointed under the Minors' Act.

290. MR. B. W. COLVIN—

suggests that some provision should be made, as in section 10 of Bengal Act IX of 1879 (Court of Wards), for giving the Court of Wards discretionary powers as to assuming charge of an estate made over to it by the Civil Court.

291. MR. DUTHOIT—

quotes statistics and states certain facts from which he draws the inferences "that hitherto in the North-Western Provinces, Act XL of 1858 has been, comparatively speaking, inoperative, and that neither the personal benevolence of the friends of minors, nor the public benevolence of the district officer, can be trusted to secure for the persons concerned the benefits of the existing law."

He thinks it is desirable that, in the North-Western Provinces and Oudh (of which Provinces alone he writes), greater protection should be to minors than is given by the present law, though he would not go so far in this direction as some of the proposals made by the Judges of the Bombay High Court would tend. The proposals made by Mr. Justice West in his Minute dated 21st August 1881 (Home Department's Judicial Proceedings No. 69 for October 1882) are, he gathers, intended to prevent the hardship arising from litigation, but he shews that the amount of litigation (in the North-Western Provinces and Oudh) is not large. Referring to the remarks of the Government of India in paragraph 7 of its Resolution, he says this litigation is mainly due to a total disregard shewn by guardians of the rights of minors who are members of an undivided family, and adds that it is of a very debasing kind. He writes:—

"During the minority of a member of a joint Hindu family the adult coparceners alienate the family property; and when the minor member attains his majority the family combines to oust the alienee on the ground that the alienation was invalid, as made to the prejudice of the minor without legal necessity. What constitutes 'necessity' sufficient to justify the alienation of Hindu family property is a difficult question to decide, and in most cases of this kind the value of the property, or more, is absorbed in the litigation regarding it. * * * The law as it stands does not touch them; for (Mayne's *Hindu Law and Usage*, section 307) the Mitákshara theory of a coparcenary is that all the coparceners are joint owners of the property, but only as members of a corporation in which there are shareholders but no shares; and there is consequently no specific property vested in the minor to which the provisions of Act XL of 1858 can be applied."

He then proceeds to shew certain objections, having regard to the Hindu law, to the adoption of Mr. Justice West's proposals (*i*) that, where there is imminent danger of the common property being dissipated, the District Court should be given power on its own motion, or on cause shown, to "take measures for securing the infant's share of it;" and (*ii*) that the Court should be allowed, "even when no such apprehension exists, to provide, when the necessity is obvious, for the minor's nurture and education according to his station in life."

He approves, however, of the principle of Mr. Justice Melvill's proposals. (Minute, dated 23rd August, 1881, Home Department's Judicial Proceedings, No. 168 for October, 1882):—

(1) that in the case at least of every considerable estate, and especially when it consists of immovable property, every administrator should be obliged to show his fitness before he meddles with the property; and

(2) that this object should be effected—

(*a*) by compelling everyone who requires the assistance of the Court to obtain a certificate, and

(*b*) by rendering it unsafe for any person to enter into any transaction affecting immoveable property except with a certificated administrator;

except that in clause (1) he would read "in the case of every estate not below Rs. 250 in value, every administrator," &c., and in clause (*b*) he would omit "immoveable."

He does not approve of Mr. Justice West's proposal to oust the Revenue-authorities from jurisdiction under the Minors' Act or of the proposal to bar the interference of the High Court except on a point of law or on a reference made by the District Court, or of the proposal to require proceedings to be initiated in the District Court, and by it delegated to some other Court. Regarding Sir Michael Westropp's suggestion (Minute, dated 19th November, 1881, Home Department's Judicial Proceedings No. 170 for October 1882), to meet the case of the Hindu joint family, he considers it does not require legislation.

He further criticises certain other proposals made in Mr. Justice West's Minute, on points which are not taken up in the Government of India's Resolution.

Mr. Duthoit's own views as to what is required for the protection of minors he describes as follows:

"*First*—We want to make the assistance of the State readily accessible to the public; and not force people, as is done at present, to the expense or trouble of going to the head-quarters of a district for the settlement of a minor's protection, excepting under special circumstances.

"*Secondly*—We want to lead people to apply for certificates, and not to feel the doing so, or the acceptance of the care of a minor's property a burden.

"*Thirdly*—We want, on the one hand, to calm the sensitiveness of the Revenue-authorities as to the danger of being overwhelmed with minor's affairs * * and we want, on the other hand, to engage their sympathies in those affairs, and to obtain from the Revenue-authorities in regard to them such limited assistance as it may be possible for those authorities to give."

For the carrying out of these views he submits the following proposals:—

"I would work up into the new law the provisions of the existing law for curators in cases of

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*General suggestions for the amendment of the Minors' Acts.*)

succession (Act XIX of 1841), for the care of the persons and property of minors (Act XL of 1858), for the custody of minors (Act IX of 1864), for the Court of Wards (Chapter VI, Act XIX of 1873, and Chapter VIII, Act XVII of 1876), so far at any rate as minors are concerned, and those of the European British Minors Act, 1874, the arrangement of which last-named Act I would take as the basis of the arrangement of the new statute."

"In cases in which European British subjects are concerned, or in which an estate of ₹10,000 or upwards is involved, the application for protection of the minor's interests should, I think, be made to the District Court. In all other cases the Munsifs' Courts should, I think, have jurisdiction.

* * * * *

"I would extend the provisions of section 4, Act XL of 1858, and would allow the Collector to move the Civil Court in all cases, whether the property does, or does not, consist, wholly or in part, of land or an interest in land.

"I would give to the Civil Courts power to consult the Revenue-authorities as to the fitness of persons proposed as guardians or managers, and as to whether it would, or would not, be advisable that the manager should be a public officer; and I would give to the Local Government power to oust the jurisdiction of the Civil Courts by a declaration in the *Gazette* that it is advisable that the property and person of a particular minor should be cared for by a public officer to be named by it. * * * With the exception noted, I would have all business connected with the protection of minors brought in the first instance into the Civil Courts, and would leave to those Courts discretion as to the mode in which such protection should be afforded, whether through a private person or through a public officer.

* * *

"I would remunerate, by a percentage on the value of the estates protected, all persons, whether private or public—in the latter case Government would take the remuneration and pay the salaries—who might be appointed curators.

"I would have one or more public curators in each district. I would leave the appointment and the superintendence of these officers to the Revenue-authorities. I would make Collectors and Deputy Commissioners Courts of Wards. The present system, under which the Board of Revenue is in the North-Western Provinces the Court of Wards, is, I think, cumbrous and unduly burdensome to the estates placed under it.

"I would leave it to the Court which is possessed of the application to say whether the care of the person and the property of the minor should be vested in a private person, in a public curator or in the Court of Wards. But I would make the orders of the Munsif appealable in this behalf to the District Judge, and I would further give to the Collector power to appeal to the District Judge against a Munsif's order making over an estate to the Court of Wards, and to Government a right of appeal to the High Court from an order of the District Judge to that effect.

"I would levy on each final order passed upon an application for protection an *ad valorem* stamp-duty at somewhat less than the present rate, whether the order be for administration by a private person, by a public curator or by the Court of Wards; but I would remit the duty altogether when the value of the property in respect of which the order is made does not exceed R1,000.

"I would direct that, except in special circumstances, the reason for finding which should be recorded by the Court, all costs of a successful application should be payable out of the estate."

He continues:—

"I do not think that the labours of district officers would be increased if the scheme I have proposed were adopted. With public curators, and remunerated private persons available for the charge of estates of minors, the duties of the district officer as a Court of Wards would, I think, be so diminished as to more than counterbalance the extra supervisional labour which my scheme would throw upon him.

"The system which I have proposed may possibly be unsuited to the circumstances of other parts of India. If, as is most probable, the varying circumstances of the country require a varying agency for the protection of minors, it will be easy to leave the assignment of such agency to the Local Governments subject to the sanction of the Governor General in Council. But I venture to suggest that the principles of directing the costs of a successful application to be paid out of the estate, and of remunerating all guardians of the property of minors, should find a place in the Act, and that in the assignment of the agency of working the Act, the necessity of bringing its benefits as near to the door of the people as possible should not be lost sight of."

Mr. Duthoit further submits the following suggestions:—

"A.—I would require, to each application made by a private person for the issue of a certificate of guardianship, a declaration of the age of the minor verified as provided by sections 51 and 52 of the Code of Civil Procedure; and I would require a public officer when making an application under the statute to certify that he has made inquiry as to the age of the minor, and that such age has been found to be as stated in the application. The age of a minor is easily ascertained when he is *infans*, *infanti proximus*, or even *pubertati proximus*; but as 'full age' is approached the difficulty becomes greater, and I have known an instance of great trouble and expense caused by the omission to ascertain the age of the child when the application for an Act XL of 1858 certificate was made, and the consequent doubt as to the time at which the child's minority ceased.

"B.—I would provide that, in default of guardians appointed by testament, the guardians-at-law should, in the absence of special reasons to the contrary, be appointed guardians of the person, and that an order of a subordinate Civil Court setting aside testamentary guardians, whether of the person or property, or guardians-at-law of the person, should require the confirmation of the District Court before it takes effect; and that from an order of a District Court setting aside testamentary or 'natural' guardians of the person an appeal should lie to the High Court.

"C.—I would sugegst that advantage be taken of this opportunity to consolidate into one enactment the entire law of *Tutela* and *Curatela*; in other words, that the necessary provisions of Act XXXV of 1858 and of the various Courts of Wards and care-and-custody-of-minors enactments should be gathered up into the new statute.

"D.—And if this be done, I would suggest that the case of spendthrifts should be treated along with that of lunatics, and that, as regards both these classes of persons, use should be made of a family council constituted somewhat in the man-

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*General suggestions for the amendment of the Minors' Acts.*)

ner provided by sections 407 to 410 of the French *Code Civil*. It is notorious that the state of the law as regards what are called in this part of India '*dadá polá* cases'—suits by sons or grandsons of the tenor of *Dindyal Lal* v. *Jagdip Narayan Singh*, L. R. 4 I. A., 247—is unsatisfactory; and the aid of the legislature is, I think, greatly needed regarding it. By means of provisions analogous to those of the French Code (sections 513 to 515—the Collector or Deputy Commissioner should take the place of the *tribunal de première instance* in section 492 *et seq.*, and the Commissioner that of the *Cour d'appel* in sections 500 *et seq.*), protection might, I think, be afforded to minor members of an undivided Hindu family without shocking the prejudices of the people. The Courts of Wards in the North-Western Provinces and Oudh already (*cf.* section 194, Act XIX of 1873, and section 162, Act XVII of 1876) undertake the protection of estates from the management of which the proprietors apply to be disqualified; and managing members of undivided families (as a father with male issue) are practically treated as proprietors. With the safeguard of a family council, I do not think that there would be political danger in allowing the Government to disqualify a spendthrift, for whose property a curator might thereupon be applied for, and given, under the statute."

292. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER, NORTH-WESTERN PROVINCES AND OUDH,—

forwards copy of a volume of the Proceedings of the North-Western Provinces and Oudh Government (in file), containing some correspondence which, it is suggested, may be of interest in connection with the proposed amendment of the law.

293. MR. BEHARI LAL BASU—

suggests that "District Court" should be used instead of "Civil Court" throughout the new Act, and the definition in section 29 of Act XL of 1858 removed.

294. MR. H. J. SPARKS—

suggest that some principles might be laid down for the guidance of the Court in appointing a guardian of the person or property, as has been done in section 10 of Act XIII of 1874.

295. UMAR BAKHSH—

suggests that regular suits for the guardianship or curtody of minors should be distinctly prohibited, on the ground that if they are allowed the object of the special Minors' Act will be defeated.

296. KHAN AHMAD SHAH, EXTRA ASSISTANT COMMISSIONER, HOSHIARPUR,—

submits remarks and recommendations to the following effect for consideration in connection with the amendment of the law:—

It would be next to impossible to insist on every guardian being certificated, both because of the large numbers of minors owning property, and because of the small value of that property in many cases. At the same time, the interests of minors do at present suffer from the dishonesty of guardians by relationship who are uncertificated, and therefore free from control; and as regards other guardians no proper enquiry is made to ascertain whether they are entitled (? fit) to receive certificates.

Recommendations—

(1) Guardians should be compelled to take out certificates in every case where the minor's property exceeds Rs. 3,000 in value or yields an income of more than Rs. 30 per month:

(2) certificated guardians should be required to submit half-yearly accounts to the Court, and the sanction of the Court should be required to certain of their acts, such sanction to have a binding effect:

(3) persons wishing to call in question the acts of certificated guardians should be allowed to examine their accounts as filed in Court, and to submit their complaints to the Court, but should be debarred from bringing suits, as next friends of the minor, against the guardian:

(4) in considering applications for certificates the Court should have regard to the following points:—

1st, nearness of relationship (of the applicant to the minor):

2ndly, the wishes of the deceased parent the minor:

3rdly, any present or previous connection of the applicant with the property of the minor:

4thly, whether the death of the minor would be beneficial to the guardian (? applicant):

(5) where a minor's property does not exceed Rs. 3,000 in value or does not yield an income of more than Rs. 30 per month, it should be optional with guardians to take out a certificate or not, and certain restrictions should be placed on the power of all guardians in such cases:

(6) all guardians should be made responsible for the health, maintenance, education and religious instruction of minors under their charge:

(7) the Court should be empowered to remove any guardian on any of the following grounds:—

"(1) using trust *mala fide*;

(2) continued failure to perform his duties;

(3) gross misconduct;

(4) insolvency:"

(8) the Court empowered to appoint or remove a guardian should be the District Court.

297. SARDAR GUBDIAL SINGH—

writes at some length to show that the near relatives of minors in his district usually squander and misappropriate to their own use the income of minors under their care, and that for various reasons the minor refrains from calling the guardian to account on attaining his majority. He also hints that even the persons of minors are not always secure from danger. To check these evils he thinks the Civil Courts should have more extended authority than they at present possess for interfering for the protection of minors, and to that end suggests that [? *inter alia*] the Courts should have a discretionary power to interfere whenever they think proper, instead of being empowered, as at present, to act only when specially moved. He suggests that the law should provide "that the Civil Court may appoint guardians to manage the property of a minor and to take charge of his person whenever—

"(*a*) on its own motion,

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Madras Regulations V of 1804 and X of 1831.*)

"(*b*) on receiving any report or information from any person acquainted with the state of the minor's property or person, or

"(*c*) on the application of any relative or friend of the minor for appointment of a guardian,

"it appears to the Court, after hearing the persons having charge of the minor's person or [? and] property, and after making any further enquiries that may be necessary, to be advisable to do so."

He would require the Court to issue a notice to appear to the persons having charge of the property and person of the minor, and would also, as a further safeguard, make the Court's order appealable.

He further thinks Act XL of 1858 is wanting in clearness in regard to the appointment of guardians of the property on the one hand, and guardians of the person on the other, and suggest that the new Act should contain provisions like the following :—

As regards the appointment of guardians for the management of property :—

"The Court shall have power to appoint any person manager of the property of the minor who in its opinion appears to be fit: Provided that if any person has been nominated a guardian in the will of the last owner of the property, and such will has duly been proved, he shall be appointed a guardian if he accepts the trust, and if the Court does not for any special reason think him to be unfit: Provided also, that preference is to be shown to the friends and *near* relations of the minor, if otherwise fit for the trust.

"In the case of land assessed with land-revenue or the land-revenue of which has been assigned to some one by the Government, the management may be made over to the Collector, who shall be competent to manage it in the manner prescribed by law for the management of property subject to the jurisdiction of Court of Wards; and in the case of moveable or immoveable property other than land assessed with land-revenue, the Public Curator, if there be such an officer in the district, may be appointed guardian."

As regards the appointment of guardians of the person, he would make it a rule that the guardian should be a person of the same class and religion as the minor, and would prohibit the appointment of any person having any interest of his own adverse to that of the minor, or who would be next in succession to the minor, were he dead; and, lastly, would provide that none but a female should be the guardian of a female. With these restrictions, he would give the Courts full discretion.

He would also add a section providing that no person is to be appointed guardian against his will, and that no one is liable to punishment for refusal to act as guardian when required by the Court to do so.

He thinks Act XL of 1858 does not provide sufficiently for the control of guardians. Some guardians certainly might safely be trusted to manage estates without any great control from the Courts; but others would require very close supervision. He accordingly suggests that the Courts should be allowed full discretion in this matter; but would, at the same time, enact provisions to the following effect :—

(1) All guardians of property appointed by the Court should be bound to report before the expiry of three months after the close of each year the *net financial results* of their management, so as to enable the Court in any case in which it suspects anything wrong to set on foot timely enquiries.

This would, he says, afford a great check on fraud, for, the statement being filed in Court, the guardian would not be able to alter it afterwards, or set up anything contrary to it when he is subsequently called upon to render accounts. The guardian need not file complete accounts; a statement of the sort indicated would be quite sufficient to show the Court the result of the administration.

(2) The Court should have power to call upon any guardian—

"(*a*) to file such periodical statements, returns and accounts as it may direct;

"(*b*) to make such reports on any points connected with the management of the estate as it may require;

"(*c*) to carry out such directions as to the management as it may give;

"(*d*) to invest or deposit the surplus or the balance in hand in such place of security (Government Securities, Government Treasury, Government Savings Banks) as it may direct."

He also suggests that provisions to the following effect should be made regarding the duties of guardians of property :—

"That every guardian should—

"(*a*) obey all directions given by the Court under the provisions of the Act;

"(*b*) consult the Court (i) before making any alienation of the minor's property; (ii) before compounding in any suit in which the minor may be a party; (iii) before abandoning any right belonging to the minor; and (iv) on any other important occasion, or on an any difficulty arising in the management; and

"(*c*) report to the Court any severe loss that any portion of the minor's property may have suffered from any cause."

With respect to the duties of guardians for the person, he suggests that the following should be imposed upon them :—

They must—

"(*a*) consult the Court (1) on the arrangements made or to be made for the education of the minor, and (2) regarding matters affecting the marriage of the minor;

"(*b*) report all cases of protracted illness of and accidents to, the minor, and

"(*c*) obey all directions given by the Court regarding the above matters."

He also suggests that guardians of the person should, subject to the general control of the Court, have power to do all acts calculated to advance the well-being of the minor; for instance, acts connected with his education and his proper moral and physical training.

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295. In the following paragraphs (299 to 373) are noted suggestions for the amendment of the law on particular points directly connected with provisions already existing in the Acts and Regulations.

299. As to Madras Regulation V of 1804, see remarks by Sir Charles Turner in paragraph 253 of précis.

310. As to Madras Regulation X of 1831, see remarks by—

Mr. H. Wigram, in paragraph 242 of précis;
Mr. J. W. Handley, in paragraph 249 of précis;

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Act XIX of 1841. Act XL of 1858, ss. 3—7.*)

Mr. P. Srinivassa Rao, in paragraph 250 of précis;

Mr. G. Muttuswamy Chettiar, in paragraph 251 of précis;

the Madras Board of Revenue, paragraph 252 of précis; and

Sir Charles Turner, in paragraph 253 of précis.

301. As to Act XIX of 1841, see remarks by—

Mr. H. Wigram, in paragraph 242 of précis; and

Mr. Duthoit, in paragraph 291 of précis.

302. MR. JUSTICE FIELD—

quotes cases to shew that the practice of the Courts has not been uniform as regards the application of the proviso to section 3 of Act XL of 1858. In some cases it has been held that when the Court entertains a suit instituted by a person who has not obtained the permission required by the proviso, the requisite permission is to be deemed to have been given; while in others it has been held that a suit instituted without permission previously obtained is bad to all intents and purposes. Cases are quoted to show that the latter rule is the more correct one, from the point of view of principle.

303. LALLA MADAN GOPAL—

suggests that certain particulars should be prescribed for insertion in all applications; that the Courts should be allowed to act also on their own motion; and that explanations to the following effect should be appended to the section:—

"I. Lapse of years is not a sufficient ground for refusing a certificate [see C. W. R., 343]

"II. The guardianship of infants who have no property is a matter which forms the subject of Act IX of 1861."

303A. MR. BEHARI LAL BASU—

observes that the word "suit" is not wide enough to include "proceedings and applications."

[In regard to this section, please also see paragraphs 4 to 46 of précis, under "Point I."]

304. MR. PLUMBER—

would transfer the powers of the Collector to the amildár (or tahsildár) of the taluq in which the land is situated, as in Rule 4 of the Mysore Minors' Rules.

305. MR. JUSTICE FIELD—

writes as follows:—

"There seems no reason why the right to make an application under this section should be limited to a relative or friend. Under the English law, any person may apply in order, says Mr. Daniell, 'that the benefit arising from the protection of the Court may be extended to all cases in which interference is desirable, subject, however, to the risk of incurring the censure of the Court, and of being compelled to pay the costs of the suit, in the event of its subsequently appearing that the proceedings were improperly instituted.' (Chancery Practice, Vol. II, p. 1191)."

306. LALLA MADAN GOPAL—

suggests that the section should be amended as follows:—

Any relative or friend of a minor in respect of whose property such certificate has not been granted, *or a certificate holder who wishes to withdraw and desire the appointment of a new guardian*, &c., &c.

307. MR. BEHARI LAL BASU—

considers the phrase "interest in land" objectionable, apparently for the reason that it does not adequately cover the case of members of an undivided Hindu family.

[Please also see suggestion by Mr. Duthoit in paragraph 291, *supra*.]

308. THE HON'BLE MR. PAUL—

considers section 5 of Act XL of 1858, defective in not providing for cases where the minor happens to reside in a district in which he has no property. *Act XL 1858, s. (= Act 1864, s.*

309. MR. H. J. SPARKS—

suggests that the section should be made more explicit, observing that it does not provide for cases in which the minor is residing out of British India.

He also suggests that it might be well to provide for District Delegates, as in Act VI of 1881, to meet cases where, as in Oudh, there is but one District Judge for two or more revenue districts.

310. LALLA MADAN GOPAL—

suggests that "residence" should be explained as meaning the minor's "*usual* dwelling-house, *i.e.*, his paternal family-house."

311. LALLA MADAN GOPAL—

suggests that provision should be made as to the manner of issue of notices and the persons on whom they are to be served, and as to who may oppose the application. He quotes authorities to shew that the notice should be served on all parties interested in the application.

312. SARDAR GURDIAL SINGH—

considers it unnecessary that the procedure of the Court should be specially prescribed by the Minors' Act, and that it would be sufficient to enact that the general procedure laid down in the Code of Civil Procedure in force at the time shall apply as far as practicable.

313. MR. BEHARI LALL BASU—

thinks it undesirable, in view to the selection of a good guardian, that the enquiry should be a summary one, as this section requires.

314. MR. JUSTICE FIELD— *Act XL of 1858, s. 7 (= Act XX of 1864 . 6.)*

writes as follows:—

"Under the provisions of section 7 of the Act, if it appears that any person claiming a right to have charge of the property of a minor is entitled to such right by virtue of a will or deed, and is willing to undertake the trust, the Court *shall* grant a certificate of administration to such person. It has been held that in this case it is compulsory upon the Court to grant this certificate (see *Nannee Bibee* v. *Khojah Surwur Hossein*, 7 W. R., 522). It has further been decided that when any such person obtains a certificate of administration, he is not bound to file accounts (see the cases at 6 W.R. Mis. Rul., 53; 7 W.R., 522; 23 W.R, 278) There is no reason why such persons should be exempt from liability to account. According to English law, a testamentary guardian is in all respects subject to the control of the Court, and is liable to account for what he receives (Daniell's Chancery Practice, Vol. II, p. 1205)."

315. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) support Mr. Field's suggestion as to filing accounts.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Act XL of 1858, ss. 8—10.*)

316. MR. FIELD—

continues:—

"The section then proceeds to enact that if there is no person so entitled, or if such person is unwilling to undertake the trust, and there is any near relative of the minor who is willing and fit to be entrusted with the charge of his property, the Court may grant a certificate to such relative. Here a discretion is vested in the Court. Then the Court may also, if it think fit (unless a guardian have been appointed by the father), appoint such person as aforesaid to be guardian of the person of the minor. The exception assumes a power in the father to appoint a guardian by will. The existence of this power as regards persons to whom the Act applies, that is minors not being European British subjects, may be doubtful. It may be observed, as in England, that the power of appointing a testamentary guardian was conferred by Statute (12 Car. II, cap 24), and as by the law of England no will made by any person under the age of 21 years is valid, it follows that a father, while under that age, cannot now by will dispose of the custody of his children. Then in the case of a guardian appointed by the father, it would appear that the Court has no power to remove such guardian. The last clause of section 21 provides that 'the Court may also, for any sufficient cause, remove any guardian *appointed by the Court*,' thus indicating that the Court has no power to remove a guardian appointed by the father. Under the law of England, a testamentary guardian is subject to the control of the Court, both with respect to the property and the person of the infant, and the Court may remove him and appoint another guardian in his stead, or may without removing him appoint another person to have the care of the infant (Chancery Practice, Vol. II, p. 1194). It is obvious that there may be cases in which it is very desirable that the Civil Court should have the power of removing a testamentary guardian."

317. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) support Mr. Field's suggestion as to taking power to remove a guardian appointed by the father.

318. MR. JUSTICE TOTTENHAM—

writes as follows:—

"I would make it clear that, in cases of rival claims to a certificate, preference should not necessarily be given to any one claimant on the mere ground of nearness of kin to the minor, or on the ground of sex. The nearest of kin may often be the person to whom, for other reasons, it may be most objectionable to grant a certificate.

"I would also preclude the Court from entertaining any application for a certificate unless satisfied that property needing protection is actually in possession of the minor or of some person on his or her behalf. I remember a case in which the only property was in the possession of adversaries, and the object of the application was to try to induce the Court to direct the Collector to take charge of the estate, which was said to be interest in land, in order that that officer might undertake a troublesome and costly lawsuit to recover possession for the minor."

319. LALLA MADAN GOPAL—

says that by Hindu law the duty of providing for the care of the persons and property of minors devolves on the Sovereign, while by Muhammadan law certain classes of relations have a prior right. This being the case, he thinks the inclusion of the rights of guardianship and minority in section 5 of Act IV of 1872 (the Punjab Laws Act) was a mistake; also, that it is surprising, in view of that enactment, to find Schedule I of that Act declaring Act XL of 1858 to be in force in the Punjab.

He submits a list showing classes of persons whom he thinks the Courts should be prevented (apparently, by express declaration) from appointing as guardians.

Further on, he suggests that section 27 of the Act should be embodied as an explanation in section 7; also, that the Courts should be allowed discretion to refuse to grant a certificate to an unfit person appointed by will, and an explanation inserted declaring that fitness should be allowed more weight than mere nearness of relationship.

320. UMAR BAKHSH—

suggests that the Court should be empowered to reject an unfit person appointed by will or deed.

Further:—

"The words 'near relative' in the same section are rather vague, and further it is not clear whether the scope of the section is to select the fittest person from among the relatives of different or equal degrees, or to appoint the nearest person fit for the post. I think it should be expressly provided that brother of the whole blood and uncle should have prior right to the guardianship of a minor, unless they are unfit; but in the case of distant relatives the Court should have full discretion of selecting the fittest person, disregarding the nearness of relationship."

He also suggests that where a minor has considerable property the Court should have power to appoint more than one person to administer the estate, if that should be deemed necessary in the interests of the minor.

[Please also see suggestions by—

Khan Ahmad Shah, in paragraph 296 of précis; and

Sardar Gurdial Singh, in paragraph 297 of précis.]

321. LALLA MADAN GOPAL—

suggests an addition to section 8 of Act XL of 1858 to the following effect:—

"The Court will not adjudicate merely on the Collector's report [see 22 W. R., 490], but must satisfy itself as to the applicant's fitness on legal evidence" [see 9 W. R., 555].

322. SARDAR GURDIAL SINGH—

"would give the Court power to enquire into the character of any person, and to call for reports from any Revenue-officer, Magistrate or Police-officer in the district."

[Please also see suggestions by Mr. Duthoit in paragraph 291 of précis.]

323. SIR CHARLES TURNER—

referring to section 9 of Act XX of 1864 recurs to a suggestion recently made by the Madras High Court that there should be appointed in every district a public officer to take charge of private trusts under the superintendence of the Official Trustee. If this proposal be accepted, the Courts might, he suggests, be enabled to appoint such officers, and in any case the Official Trustee to be manager of the property of a minor.

He considers that considerable relief would be afforded to Revenue-officers by the creation of the proposed offices, and that a commission, not exceeding 5 per cent., would probably provid

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Act XL of 1858, ss. 11—18.*)

sufficient salaries and meet the costs of establishment.

324. LALLA MADAN GOPAL—

suggests, with reference to Mr. Justice Melvill's criticism on section 9 of Act XX of 1864 in his Minute of 23rd August, 1881, that the words "or the like" mean "immoveable property (other than village-land assessed with revenue, for which provision is made by placing it in charge of the Collector), such as shops, katrás, warehouses, &c."

325. SARDAR GURDIAL SINGH—

thinks the words "moveable property or houses, gardens or the like" were intended to mean (*1*) moveable property, and (*2*) immoveable property other than land, of which the Collector could be asked to take over the management.

326. THE HON'BLE MR. PAUL—

referring to Mr. Justice Melvill's criticisms on sections 9 and 11 of Act XX of 1864 in his Minute of the 23rd August, 1881, observes that "the distinction between 'houses, gardens and the like' and 'land or any interest in land' is probably that between revenue-paying immoveable property and that which does not pay revenue, including in the category of revenue-paying property such as may be *lákhiráj* by reason of exemption."

327. SARDAR GURDIAL SINGH—

suggests that a limit should be put to the guardian's allowance; that, to encourage economy in administration, it should be calculated on net profits, and not on income; and that it should be fixed at 20 per cent. His reason for selecting so high a rate is that the remuneration would be small on small estates.

328. LALLA MADAN GOPAL—

observes, with reference to Mr. Justice Melvill's remarks on the word "aforesaid" in section 10 of Act XX of 1864 (see Home Department Judicial Proceedings, No. 168 for October, 1882), that in the Bengal Act, section 11, it clearly refers to section 10 of that Act and is not open to any misconstruction.

329. LALLA MOHAN LALL AND MIÁN ASDULLA,—

referring to Mr. Justice Melvill's criticism, say they think the provision in section 10 of Act XX of 1864 excluding legal heirs and persons next in succession from the guardianship of the person of a minor, which does not occur in the Bengal Act, ought to be embodied in the new Act.

330. SARDAR GURDIAL SINGH—

is of the same opinion.

[Please also see suggestions by Mr. Duthoit in paragraph 291, *supra* (on pages 100 and 101).]

331. MR. H. J. SPARKS—

suggests that provision should be made—

(1) for cases in which only a small part of the property consists of land, and

(2) for cases in which the land is situated in more than one district.

332. BABU KOYLAS CHUNDER GHOSE—

suggests that provision should be made enabling the Collector to give up charge of an estate taken over by him under this section, when it would be for the benefit of the minor to do so.

333. MR. PLUMER—

suggests that a half-yearly statement of account should be prescribed, as in Rule 15 of the Minors' Rules framed for Mysore, instead of the annual statement provided for by Act XX of 1864. *Act XL of 1858, s. 16 (= Act XX of 1864, s. 16.)*

334. THE HON'BLE MR. O'SULLIVAN—

makes the following suggestions:—

"The administrator of the property should be required to file annual accounts of receipts and disbursements, and they should be open to inspection by any relative or friend of the minor, who should be at liberty to bring to the notice of the Court, by way of petition, any neglect, default or misfeasance of the administrator."

335. LALLA MADAN GOPAL—

suggests that the obligation to render accounts should be extended to all guardians and administrators.

336. LALLA MOHUN LALL AND MIÁN ASDULLA—

urge that the provisions of sections 16 and 17 should be extended to all guardians and administrators, arguing that it may be very necessary to provide against fraud or waste by those to whom the sections do not at present apply.

337. MR. BEHARI LAL BASU—

suggests that section 16 should be extended to all guardians; also that any friend or well-wisher of the minor should be allowed access to their accounts.

[Please also see suggestions by—

Mr. Justice Field, in paragraphs 258 and 314 of précis;

the Judges of the Calcutta High Court, in paragraph 315 of précis;

Khan Ahmad Shah, in paragraph 296 of précis; and

Sardar Gurdial Singh, in paragraph 297 of précis.]

338. MR. PLUMER—

suggests that for section 17 of Act XX of 1864 should be substituted Rule 16 of the Minors' Rules framed for Mysore, which requires that surplus funds shall be deposited in the District Treasury and invested *by the Court* in public securities. *Act XL of 1858, s. 17 (= Act XX of 1864, s. 17.)*

339. LALLA MADAN GOPAL—

writes:—

"'Public securities' denotes Government promissory notes. I would suggest that this limitation be removed, and that it may be left to the discretion of the Court to lay out the surplus in any profitable manner that is suggested to it by the administrator, *e.g.*, in mortgaging landed property or purchasing debentures or bank shares."

340. BABU KOYLAS CHUNDER GHOSE—

considers it desirable to impose a penalty for the enforcement of the provisions of this section which are, he says, seldom observed.

[Please also see suggestions by—

Sardar Gurdial Singh, in paragraph 297 of précis; and

Lalla Mohun Lall and Mián Asdulla, in paragraph 336 of précis.]

341. MR. JUSTICE FIELD—

says it has been decided that when an application for leave to deal with the property of an infant is made under the second clause of section 18 of Act *Act XL of 1858, s. 18 (= Act XX of 1864, s. 18.)*

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Act XL of 1858, ss. 19-26. Act IX of 1875.*)

XL of 1858, the Civil Court is bound to determine the question whether the proposed mode of dealing with it would, if sanctioned, be for the benefit of such infant, and that the petition should contain all the materials reasonably required to enable the Court to decide this question. He gives a reference to *In re Srish Chunder Mukhapadhya*, I.L.R. 6 Cal., 161; S.C. 5 Cal. L.R., 501; and *Sikher Chund* v. *Dulpat'ty Singh*, I.L.R. 5 Cal., 363, and suggests that the substance of those decisions might well be incorporated in the proposed new Act.

He further remarks upon this clause as follows, as to the effect of neglecting to obtain the sanction of the Court:—

"Where a guardian has obtained a certificate of administration under the Act, it has generally been held that any sale of the minor's property for which the Act requires the sanction of the Civil Court, if made without such sanction, is invalid and conveys no title (see the cases of *Surul Chunder* v. *Raj Kishen Mukherji*, 15 B.L.R., 350, S.C., 24 W.R., 46; *Paran Chunder Pal* v. *Kuroona Moyi Dasi*, 7 B.L.R., 90; *Dabi Dutt Sahoo* v. *Subhodra Bibee*, I.L.R. 2 Cal., 283; *Buchraj Ram* v. *Ram Kissen Singh*, 11 C.L.R., 345). In *Manjiram* v. *Tara Singh* (I.L.R. 3 All., 852) it was decided that a minor could not ratify such a transaction. See to the contrary *Til Koer* v. *Roy Anund Kishore*, 10 C.L.R., 547, where a mortgage by a certificated guardian, although made without the sanction of the Court, was upheld, the transaction being, under the circumstances, considered a proper one."

342. LALLA MADAN GOPAL—

quotes conflicting decisions on the question whether this section applies to non-certificated guardians.

343. BABU KOYLAS CHUNDER GHOSE—

writes:—

"The law, as it stands at present, contains no directions as to how the Court should proceed when an application for sanction is presented. Generally the sanction is given on the representations of the administrator, but this is not always safe. The administrator, where he makes an application of the kind, should be required to prove the necessity for the sale, &c., by affidavit or otherwise, and the assertions contained in his affidavit should be tested by some officer of the Court before the Court accords its sanction to the sale, &c."

[In regard to this section, please also see paragraphs 104 to 138, under "Point IV," paragraphs 148 to 183, under "Point VI," and paragraphs 184 to 201, under "Point VII."]

344. LALLA MADAN GOPAL—

approves of Mr. Justice Melvill's suggestions on this section (see Home Department's Judicial Proceedings, No. 168 for October, 1882, at foot of page 24).

345. MR. JUSTICE FIELD—

writes:—

"In connection with section 21 of the Act, it will be useful to consider the decision of the Full Bench in the case of *Nonnee Bibee* v. *Khojah Surwar Hossein*, 7 W.R., 522. It was here decided that a certificate granted under section 7 of the Act may be recalled summarily under the provisions of section 21, and this without any action having been previously taken in a regular suit under the provisions of section 19 of the Act."

(Please also see his remarks and those of the Calcutta High Court in paragraphs 316 and 317 of précis, as to taking power to remove a guardian appointed by the father.)

346. LALLA MADAN GOPAL—

suggests that to meet Mr. Justice Melvill's objection as to the vagueness of the words "or any other person, as the case may be" (see Home Department's Judicial Proceedings, No. 168 for October, 1882, at foot of page 24) in section 21 of Act XX of 1864, the words "*or other fit person* within *the meaning of* sections 24 *and* 10" should be substituted for them (in the Bengal Act).

He further suggests that illustrations should be inserted to the following effect:—

"*Illustration I.*—The Court cannot summarily remove a guardian who has not obtained a certificate. This should be done by a regular suit (see II W. R., 370).

"*Illustration II.*—The grounds set forth in the preceding portion as to the disqualifications of a guardian should be held sufficient for removal.

"*Illustration III.*—Danger to the estate or welfare of the minor should also be held sufficient.

"*Illustration IV.*—Where the conduct of the guardian, though blameworthy, is not culpably bad, the Court will pass orders to regulate his conduct before removing him."

347.—SARDAR GURDIAL SINGH—

would specify the three following reasons as justifying removal of a guardian [? or recall of a certificate]:—

"(1) If he has wilfully neglected to perform any of the duties imposed upon him by law;

"(2) if he has been guilty of any other misconduct which, in the opinion of the Court, makes him unfit for the work; and

"(3) if he has formed a collusion with persons having interests adverse to those of the minor, or who are enemies of the minor."

He would further allow any of the minor's friends or relations to apply to the Court for the removal of the guardian on any of these grounds; and would provide that if, after examining such applicant, the Court sees reason to do so, it may make an enquiry, and, if the matters set forth in the application are established, may award the applicant his costs out of the minor's estate. He adds: "Of course the Court should have power to punish a wilful neglect, and power to have its orders carried out."

[Please also see suggestion by Khan Ahmad Shah in paragraph 296 of précis.]

348. LALLA MADAN GOPAL—

suggests that an explanation should be added to the following effect:—

"*Explanation.*—The successor will be appointed in the same way as the first man was appointed, *i. e.*, after issue of notice and enquiry."

349.—SARDAR GURDIAL SINGH—

thinks provision should be made for the education of female as well as male minors.

[Please also see suggestion by Khan Ahmad Shah in paragraph 296 of précis.]

350. MR. BARCLAY—

suggests that the new Act should define the word "minor."

351. LALLA MADAN GOPAL—

writes at some length to show the desirability of enacting a more suitable definition of "minor."

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Act XL of 1858, ss. 27 and 28. Act IX of 1861. Act XX of 1864, s. 12.*)

He refers to the different laws prevailing on this point in India, and to conflicting decisions as to the meaning of the definition given in section 26 of Act XL of 1858. He suggests that "minor" should be declared to mean any person (excepting, apparently, Europeans whose personal law fixes their majority at 21) who has not completed the age of eighteen years. The objections to the present definition which he specially mentions are—

(1) that it does not conclusively show whether it applies to minors regarding whom no action has been taken under the Act; and

(2) that it provides for the Mufassal a different law than that prevailing in the Presidency-towns.

In order to meet the latter objection, he urges that the new Act ought to be made applicable to the Presidency-towns as well as to the Mufassal.

352. UMAR BAKHSH—

invites attention to the rules in paragraphs 1 and 2 of section 3 of Act IX of 1875, and their effect where certificates of administration are granted under Act XL of 1858, but makes no specific suggestion for the amendment of the law.

353. SARDAR GURDIAL SINGH—

considers there can be no objection to the varying rules as to majority prescribed by Act XL of 1858, section 26, and Act IX of 1875.

354. MR. BEHARI LAL BASU,—

referring to Act IX of 1875 and other laws, statutory and "personal," suggests that it would save much confusion if one uniform age were fixed by statute for the attainment of majority; the age so fixed being made applicable to all persons and in all places throughout British India.

355. MR. J. KNOX WIGHT—

suggests that the definition of "minor" given in Act IX of 1875 should be incorporated in the proposed consolidated Act.

356. MR. JUSTICE FIELD—

invites attention to the case of *Fusikan* v. *Kajo*, I.L.R. 10 Cal., 15, in which it was held that the effect of section 21 of Regulation X of 1793, and section 27 of Act XL of 1858, is that no person other than a female shall in any case be entrusted with the guardianship of a female minor.

357. SARDAR GURDIAL SINGH—

thinks section 27 of Act XL of 1858 is intended to refer to the guardianship of the property as well as of the person of minors. He suggests that it should be amended so as to provide that no guardian shall be appointed for the person of a female minor if she be married and her husband be not a minor, provided she takes up her abode with the family of her husband; but that a guardian for her property, if any, may be appointed, unless her husband undertakes the management of it.

He also suggests that to the clause prohibiting the appointment of a guardian (either of person or property) for a minor whose father is living and is not a minor, should be added a proviso that the father is not otherwise unfit to manage his affairs, for instance, by reason of lunacy, idiocy, renunciation of worldly affairs, &c.

(Please also see his suggestion in paragraph 297 of précis.)

[Please also see suggestion by Lalla Madan Gopal in paragraph 319 of précis.]

358. MR. JUSTICE FIELD—

suggests that the question as to what orders made under the Act are appealable or not appealable should be clearly settled. He invites attention to the conflict of decision between the cases reported in 15 W. R., 492 and 23 W. R., 479. *Act XL of 1858, s. 28 (= Act XX of 1864, s. 33.)*

359. LALLA MADAN GOPAL—

suggests that an explanation should be added to the effect that every person who appeared in the original proceeding would have a right of appeal. This has, he says, become necessary in consequence of a ruling, at page 256 of the 13th Volume of Sutherland's Weekly Reporter. He does not think the right of appeal should be taken away, as suggested by Mr. Justice West (see Home Department's Judicial Proceedings, No. 169 for October, 1882); remarking that it is a great privilege and protection, and that there does not appear to be any weighty reason for its abrogation.

360. SARDAR GURDIAL SINGH—

would, in order to prevent needless litigation, provide that there shall be no appeal from the orders of the Courts excepting "orders of importance, to be specially mentioned," and that there shall be no second appeal in any case.

[Please also see suggestions by Mr. Duthoit in paragraph 291 of précis.]

361. As to Act IX of 1861, see remarks by— *Act IX of 1861.*

Mr. H. Wigram, in paragraph 242 of précis; and

Sir Charles Turner, in paragraph 253 of précis.

362. THE HON'BLE MR. O'SULLIVAN, THE HON'BLE MR. PAUL AND MR. JUSTICE FIELD— *Act XX of 1864, s. 12.*

suggest that in the new Act the Court should be empowered to require security from guardians for their dealings with minors' estates, Mr. Field quoting the English practice in support of the suggestion.

363. MR. JUSTICE OLDFIELD—

suggests that provisions should be inserted in the new Act, similar to those in sections 78 and 79 of Act V of 1881, for taking bonds for the proper administration of the estate, and for the assignment of such bonds to enable fit persons to sue upon them.

364. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER OF THE NORTH-WESTERN PROVINCES AND OUDH—

See his remarks on Mr. Justice Oldfield's suggestion, in paragraph 162 of précis.

365. MR. JUSTICE STRAIGHT—

concurs in Mr. Justice Oldfield's suggestion except as regards guardians appointed in right of will or deed.

366. MR. DUTHOIT—

considers the absence of a provision regarding the taking of security from administrators is one of the most striking defects in the existing law. He doubts whether security could be insisted on if remuneration be not given to the guardian; but if guardians of the property are remunerated, as he trusts they may be (see paragraph 291 of précis), there would, he believes, be no difficulty in obtaining security from them. Security should, he thinks, be required in all cases in which the value of the estate exceeds Rs. 250.

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*Act XX of 1864, s. 26; Act IX of 1875; Civil Procedure Code, Chapter XXXI: the Hindu Joint Family System.*)

367. BABU KOYLAS CHUNDER GHOSE—

suggests that, as a check upon guardians, security should be required from them in every case.

[See also remarks by Mr. E. Barclay in paragraph 152 of précis.]

Act XX of 1864, s. 26.

368. THE GOVERNMENT OF BOMBAY—

forward for consideration in connection with the proposed legislation certain papers showing the desirability of making provision to admit of minors being sent to schools or colleges recognized by the Local Government for the purpose, though situated "beyond the limits of the Presidency." What is desired appears from the papers to be to take power to send a minor to the college in Kolhapur (a Native State).

Act IX of 1875.

369. As to Act IX of 1875, see remarks in paragraphs 350 to 355 of précis.

Code of Civil Procedure, Chapter XXXI.

370. MR. WIGRAM—

writes:—

"The provisions of Chapter XXXI of the Civil Procedure Code appear to me unnecessarily complex, and I do not understand on what principle a mother, if a co-defendant, is prevented from representing her minor son (section 445).

"All that is really required in a Procedure Code is to provide *that* suits by and against minors shall be brought and defended in the minor's name by a guardian *ad litem* appointed by the Court and removable by the Court; *that* no appeal shall lie from the appointment of a guardian *ad litem*; *that* the guardian *ad litem* shall give a written undertaking to be responsible for costs; *that* he shall not enter into any compromise of a suit without the leave of the Court; and *that* before taking out execution of any decree he shall give security to the Court that he will account to the minor for the proceeds of the decree."

371. SIR CHARLES TURNER—

says that great difficulty is felt in securing the proper representation of minors when creditors take proceedings against their property as representing the effects of deceased debtors. The person who would by law be entitled to the guardianship may refuse to act, and no relative or friend may be found who is willing to do so, while the Court may not think it its duty to aid the creditor by appointing a guardian *ad litem*, although the probable consequence of its not doing so would be to increase the debt by allowing interest to accumulate. Moreover, when the Court is constrained to appoint a stranger to act as guardian *ad litem*, no power is given by the Civil Procedure Code to make provision for the costs of securing for the person appointed the means of obtaining professional assistance and defending the suit. In the Madras High Court the following course has been pursued:—

"If no relative or friend is found, who is willing to appear as guardian *ad litem*, the Court will, on the application of the plaintiff, appoint an officer of the Court guardian *ad litem* on the condition that the plaintiff undertakes to provide the officer so appointed with funds reasonably sufficient to enable him to defend the suit. If the plaintiff fails to provide funds, the order for the appointment is discharged. If, on the other hand, the funds are found and the plaintiff eventually succeeds, he would be allowed to receive the money as part of his costs in the cause." He adds "But generally, if not in all cases, when the order has been made, a person who would by law be entitled to the guardianship or to whom the Court would have committed the guardianship comes forward and applies that the order appointing an officer of the Court may be discharged and the applicant appointed."

Sir Charles Turner suggests that some provisions of this nature should be introduced into the Civil Procedure Code for the guidance of the Courts.

He further suggests that it would be desirable to declare that on an application for leave to sue on behalf of a minor *in formâ pauperis* the Court is to have regard to the circumstances of the minor and not of the next friend. The law has been so interpreted by the High Court, but is not, he says, generally understood.

And he expresses a doubt as to whether the "local laws" referred to in section 464 of the Code include the Minors' Act, IX of 1861, which is a "general" Act.

372. MR. JUSTICE WEST—

suggests that, in order to check a practice by which, for the purpose of harassing people interested in a minor, a pauper next friend is put forward to institute a suit against those having charge of his property, a discretion should be allowed to the Courts to require security for costs from pauper next friends.

He further says it is doubtful at present whether the next friend is to be regarded as a principal in the litigation, or whether the infant is the principal, and suggests that this point should be made clear, observing that the case of an infant who is principal with a pauper next friend is common, while a pauper infant with a next friend of competent means is not uncommon.

373. THE HON'BLE MR PAUL—

suggests that, in order to put a stop to vexatious frivolous and other improper litigation, the next friend should, in certain classes of cases, be required to satisfy the Court that the suit will be really and not merely technically for the benefit of the minor, and that the Court should see that its orders are for the minor's benefit, in the same way as in the English Courts of Equity.

[In regard to this chapter, please also see paragraphs 47 to 69, under "Point II," and paragraphs 139 to 147, under "Point V."]

[See also remarks by—

Mr. E. Barclay, in paragraph 7 of précis;

Mr. Justice Field, in paragraph 16 of précis;

Mr. Justice Oldfield, in paragraph 19 of précis;

Mr. Justice Straight, in paragraph 20 of précis;

Mr. H. T. Rivaz, in paragraph 32 of précis;

the Chief Commissioner of the Central Provinces, in paragraph 39 of précis;

the Resident at Hyderabad, in paragraph 46 of précis; and

Khan Ahmad Shah, in paragraph 296 of précis.]

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374. In the following paragraphs (375 to 386) are noted remarks regarding the Hindu joint family system, and the application of the Minors' Acts to it.

375. MR. WIGRAM—

is averse to any legislation which would render it compulsory on the Civil Courts to interfere in the case of all minor members of an undivided family; but at the same time he thinks occasions do arise

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*The Hindu Joint Family System.*)

when such interference is necessary, and he quotes a case showing this.

He suggests that "the District Court should have power to direct that a suitable provision be made for the maintenance and education of minor members of an undivided family whenever occasion arises for its interference."

(Please also see his suggestions in paragraphs 107 and 242 of précis.)

376. THE HON'BLE MR. O'SULLIVAN—

writes:—

"The managing male member of an undivided Hindu family subject to the law of the Mitakshara should not be required to take out a certificate in respect of the undivided share of a minor member of the family; but in case of malversation or mismanagement by the managing member a suit on behalf of the minor for a partition and delivery of his share should be permitted, as is the case at present; and, when the partition is effected, a certificate of administration should be granted for the share of the minor."

377. MR. JUSTICE WEST—

says the law with regard to Hindu minors, members of joint families, as hitherto conceived by the Courts in India, has recently been quite differently expounded by a judgment of the Judicial Committee of the Privy Council (*Doorga Persad* v. *Kesho Persad Singh*, L. R., 9 I. A., at page 50). He shows that that judgment will upset the existing state of things, by introducing a new limitation on the powers of fathers and other guardians who are really in the position of co-owners and are not mere guardians in the restricted sense. He suggests that this matter should be taken up promptly, and that guardians of this kind should be allowed to defend suits against minors without a certificate.

378. SIR CHARLES SARGENT—

thinks that in the case of the Hindu joint family the only satisfactory course would be to distinguish between family and separate property. In regard to the former, he suggests that until a case of fraud or abuse of powers is brought to the notice of the Court by regular suit, the charge of the minor's interest should be left to such persons as would be entrusted with it according to Hindu law and usage. In regard to the latter, please see his remarks in paragraph 223, *supra*.

379. MR. JUSTICE MELVILL—

concurs with Sir Charles Sargent on this question, and explains that he did not intend by his Minute of August, 1881, to recommend that the manager of a joint Hindu family should be compelled to take out a certificate of administration of the share of a minor co-parcener.

380. THE HON'BLE MR. PAUL—

says the adoption of the proposal noted as Point I (see *supra*) would be very inconvenient in the case of a Hindu joint family, as the introduction of a guardian from outside would cause discord and probably waste on the part of other members of the family.

(Please also see his remarks in paragragh 255, *supra*.)

381. MR. JUSTICE FIELD—

quotes cases showing the final decision of the Calcutta High Court and the decision of the North-Western Provinces High Court to be that Act XL of 1858 does not alter or affect any provision of Hindu or Muhammadan law as to guardians who do not avail themselves of that Act.

He suggests that the effect on those decisions, and also on the cases quoted by Sir Michael Westropp in his Minute of 19th November, 1881 (Home Department's Judicial Proceedings, No. 170 for October, 1882), of the Privy Council case quoted by Mr. Justice West (see paragraph 377, above) should be considered.

(Please also see his suggestions in paragraph 258, *supra*.)

382. MR. JUSTICE TOTTENHAM—

thinks it would be inconvenient that, where the minor's estate consists of a share in joint undivided family property managed by a *kurta*, any other person should be allowed to obtain a certificate.

383. THE JUDGES OF THE CALCUTTA HIGH COURT—

(collectively) suggest "that provision should be made by which, on due cause shown, the new Act might be employed for the protection of a minor member of an undivided Hindu family against the fraud or extravagance of the co-parceners, a course which, as pointed out by Sir Michael Westropp (see his Minute dated November, 1881, Home Department's Judicial Proceedings, No. 170 for October, 1882), it has been held by the Courts, cannot be adopted under the existing law."

[Please also see their remarks in paragraph 80, *supra*.]

384. SIR R. STUART—

strongly approves of the doctrine expounded in the case of *Heit Singh and another* v. *Thakur Singh and others*, High Court Reports, North-Western Provinces, 1872, page 57, that "section 2, Act XL of 1858 does not preclude the natural and legal guardian of a Hindu minor from dealing with his property within the limits allowed by the Hindu law without having acquired a certificate of administration from the Civil Court;" and trusts that the application of this doctrine in the future will not be interfered with by any legislation on the part of the Government of India.

385 LALLA MADAN GOPAL—

thinks it very desirable in the interests of minor members of Hindu joint families that the existing rulings declaring that no application for appointment of an administrator can be made in their case under section 3 of Act XL of 1858 should be disregarded and words introduced to admit of applications being made in such cases. He says that, in spite of these rulings, such applications are sometimes admitted even now. He urges that it would be easy to fix the minor's share, and that there need be no hardship, as the manager under the Hindu law would usually be the person to whom the certificate would be granted.

386. SARDAR GURDIAL SINGH—

thinks it would be necessary in some cases that the Court should have power to appoint a guardian where a minor has merely a joint interest with others, and he would definitely give the Courts discretion to move in such cases whenever they think it proper to do so.

[For further references to the Hindu joint family system, please see remarks by—

Mr. E. Barclay, in paragraphs 7 and 219 of précis;

Précis of the opinions referred to in paragraph 1 of the Statement of Objects and Reasons of the Guardians and Wards Bill.

(*General Observations.*)

Mr. Hutchins, in paragraph 71 of précis;

Sir Charles Turner, in paragraphs 77, 221 and 253 of précis;

Mr. T. T. Allen, in paragraph 79 of précis;

Mr. Duthoit, in paragraphs 84 and 291 of précis;

Mr. R. J. Crosthwaite, in paragraph 91 of précis;

Mr. Behari Lal Basu, in paragraphs 92 and 307 of précis;

the Chief Commissioner of the Central Provinces, in paragraph 94 of précis; and

Mr. G. Muthaswamy Chettiar, in paragraph 251 of précis.]

General Observations.

387. MR. R. RY. A. L. V. RAMANA PUNTULU GARU, SUBORDINATE JUDGE, MADURA—

agrees with the views expressed by Mr. Justice West in his Minute dated 21st August, 1881 (Home Department's Judicial Proceedings, No. 169 for October, 1882), as to the direction which legislation should take.

388. THE GOVERNMENT OF MADRAS—

concur in the remarks submitted by Mr. Hutchins.

389. THE PUISNE JUDGES OF THE MADRAS HIGH COURT—

concur in the remarks submitted by Sir Charles Turner.

390. THE GOVERNMENT OF BOMBAY—

"do not desire to add any further observations" to those made in the Minutes by the Judges of the Bombay High Court.

391. MR. JUSTICE TOTTENHAM—

agrees generally in Mr. Justice Field's recommendations.

392. MR. JUSTICE TYRRELL—

"entirely concurs in these views" (*i.e.*, apparently, those of Mr. Justice Straight).

393. MR. JUSTICE BRODHURST—

concurs in the remarks recorded by Mr. Justice Straight.

394. MR. DUTHOIT—

remarks that his opinion is restricted to the circumstances of the North-Western Provinces and Oudh.

395. THE LIEUTENANT-GOVERNOR AND CHIEF COMMISSIONER OF THE NORTH-WESTERN PROVINCES AND OUDH—

invites attention to Mr. Sparks' suggestions.

He suggests that it is very necessary to take every opportunity of consulting both the European and the Native community on the proposed legislation, through persons qualified to represent their feelings and interests, and that the best way of effecting this is to state points and proposals briefly and clearly for consideration by persons unaccustomed to handle legal questions.

396. LALLA MADAN GOPAL,—

in submitting his memorandum, remarks that although some of the proposals which he has made may, if adopted, cause inconvenience at first, their adoption would be justified by the result.

297. LALLA GIRDHARI LAL—

concurs generally in the remarks submitted by Lalla Madan Gopal.

398. COLONEL GURDON—

specially commends to notice the memorandum of Muhammad Latif, Extra Assistant Commissioner of Jhang.

399. MAJOR-GENERAL PLAYFAIR, OFFICIATING COMMISSIONER, JABALPUR DIVISION,—

endorses the opinion submitted by Lieutenant-Colonel Grace, Deputy Commissioner of Jabalpur.

400. THE CHIEF COMMISSIONER OF THE CENTRAL PROVINCES—

concurs generally in the views expressed in the Government of India's Resolution.

401. MR. C. A. ELLIOTT, CHIEF COMMISSIONER OF ASSAM,—

expresses no opinion, as he is unfamiliar with the working of the minors' law.

402. THE CHIEF COMMISSIONER OF COORG—

gives no opinion.

SIMLA; *The 12th August 1885.* } F. G. W.

S. HARVEY JAMES,

Offg. Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, MAY 22, 1886.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced into the Council of the Governor General for making Laws and Regulations, or published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

[First publication.]

The following Bill was introduced into the Council of the Governor General of India for the purpose of making Laws and Regulations on the 20th May, 1886, and was referred to a Select Committee—

No. 6 of 1886.

THE INDIAN BANKRUPTCY BILL, 1886.

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A Bill to Amend and consolidate the Law of Bankruptcy and Insolvency in British India.

WHEREAS it is expedient to amend and consolidate the law relating to bankruptcy and insolvency; It is hereby enacted as follows:—

Preliminary.

Short title, extent and commencement.

1. *(1)* This Act may be cited as the Indian Bankruptcy Act, 1886.

(2) It shall extend to the whole of British India, and shall apply to all British subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, whether in the service of the Government of India or otherwise, and to all Native Indian subjects of Her Majesty in any place beyond the limits of British India.

(3) It shall, except as by this section otherwise provided, come into force on such date as the Governor-General in Council may, by notification in the official Gazette, fix in this behalf, which date is in this Act referred to as the commencement of this Act.

(4) Any power conferred by this Act to make rules may be exercised at any time after the passing of this Act; but a rule so made shall not take effect till the commencement of this Act. [46 & 47 Vic., c. 52, s. 127, sub-s. (3).]

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

Acts of Bankruptcy.

Acts of bankruptcy.

2. *(1)* A debtor commits an act of bankruptcy in each of the following cases:— [46 & 47 Vic., c. 52, s. 4.]

(a) if in British India or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;

(b) if in British India or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property, or of any part thereof;

(c) if in British India or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon, which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged bankrupt;

(d) if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of British India, or,

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(Part I.—Proceedings from Act of Bankruptcy to Discharge.—Sections 3-6.)

being out of British India, remains out of British India, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house, or closes his place of business, or suffers himself to be arrested or taken in execution for a debt not due, or submits collusively or fraudulently to an adverse decree, or procures himself, or his property, moveable or immoveable, to be attached or taken in execution;

[11 & 12 Vic., c. 21, s. 9.]

(e) if he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;

(f) if he gives notice that he has suspended, or that he is about to suspend, payment of his debts;

(g) if he makes to any of his creditors an offer of a composition in satisfaction of any of his debts, or a proposal for a scheme of arrangement of his affairs;

[L. R. 13 Q. B. D. C. A. 471, and Law Journal, September 21st, 1885.]

(h) if he is imprisoned in execution of a decree or order of a Civil Court for a longer period than twenty-one days for making default in payment of a sum of money.

Receiving Order.

[46 & 47 Vic., c. 52, s. 5.]

3. Subject to the conditions specified in this Act, if a debtor has committed an act of bankruptcy, the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate.

Jurisdiction to make receiving order.

[46 & 47 Vic., c. 52, s. 6 (1), clause (d).]

4. *(1)* The Court shall not have jurisdiction to make a receiving order unless—

Restrictions on jurisdiction.

(a) the debtor is, at the time of the presentation of the bankruptcy petition, in prison within the local limits of the jurisdiction of the Court, under an order of a Civil Court, for making default in payment of a sum of money; or

(b) the debtor, or, if he is a member of a firm, his partner or one of his partners, has, within a year before the date of the presentation of the bankruptcy petition, ordinarily resided or had a dwelling-house or place of business within those limits:

Provided as follows:—

(i) in any case where an application for declaring a debtor insolvent has been made under section 344 of the Code of Civil Procedure to any Court subordinate to the Court, and the Court is of opinion that the proceedings may be more advantageously conducted before itself and under this Act, the Court, on the application of the debtor or of any of his creditors, or of its own motion, may withdraw the proceedings from the subordinate Court, if competent so to do under its Letters Patent or section 25 of the Code of Civil Procedure, and may then make a receiving order under this Act in supersession of all or any of the proceedings which may have been previously taken under the said Code:

XIV of 1882.

XIV of 1882.

(ii) the Court may in any prescribed class of cases make a receiving order on a bankruptcy petition notwithstanding the restrictions imposed by clauses *(a)* and *(b)* of this sub-section.

(2) The application of the provisions of this Act to a case withdrawn under proviso *(i)* to sub-section *(1)* shall be subject to such modifications, if any, of those provisions as may be prescribed.

5. *(1)* A creditor shall not be entitled to present a bankruptcy petition against a debtor unless—

Conditions on which creditor may petition.

[11 & 12 Vic., c. 21, s. 9. 46 & 47 Vic., c. 52,

(a) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to five hundred rupees; and

(b) the debt is a liquidated sum, payable either immediately or at some certain future time; and [11 & c. 21,

(c) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition.

(2) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated, in the same manner as if he were an unsecured creditor.

6. *(1)* A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and be served in the prescribed manner.

Proceedings and order on creditor's petition.

(2) At the hearing the Court shall require proof of—

(a) the debt of the petitioning creditor,

(b) the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, some one of the alleged acts of bankruptcy, and,

(c) if the debtor does not appear, the service of the petition;

and, if satisfied with the proof, may make a receiving order in pursuance of the petition.

(3) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts, or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

(4) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against the debtor in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

(5) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss

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(Part I.—Proceedings from Act of Bankruptcy to Discharge.—Sections 7-14.)

on such terms as it thinks just, the petition on which proceedings have been stayed as aforesaid.

(6) A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Debtor's petition and order thereon.

7. *(1)* A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts; and, if the debtor proves that he is entitled to present the petition, the Court shall thereupon make a receiving order, unless, in its opinion, the proceedings ought to have been taken before some other Court having jurisdiction under this Act.

(2) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

Effect of receiving order.

8. *(1)* On the making of a receiving order the official assignee shall be thereby constituted receiver of the property of the debtor, and the debtor, if in prison, shall be released, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any suit or other legal proceeding unless with the leave of the Court and on such terms as the Court may impose.

(2) But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

Discretionary powers as to appointment of interim receiver and stay of proceedings.

9. *(1)* The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the official assignee to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

(2) The Court may at any time after the presentation of a bankruptcy petition stay any suit or other legal proceeding pending before any Judge or Judges of the Court or in any other Court in British India against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

Service of order staying proceedings.

10. Where the Court makes an order staying any suit or other legal proceeding, or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by prepaid letter addressed to the Court before which the proceeding is pending and registered under Part III of the Indian Post Office Act, 1866.

Power to appoint special manager.

11. *(1)* If in any case the official assignee, having regard to the nature of the debtor's estate or business or to the interests of the creditors generally, is of opinion that a special manager of the estate or business other than the official assignee ought to be appointed, he may appoint a manager thereof accordingly to act until the property vests in the official assignee, or, if a special assignee is appointed as hereinafter provided, until that appointment takes effect, and to have such powers of the official assignee himself as may be entrusted to him by the official assignee.

(2) The debtor may be appointed special manager.

(3) The special manager shall give security and furnish accounts in such manner as the official assignee, subject to the control of the Court, may direct, and shall receive such remuneration as the official assignee may, within limits prescribed and subject to that control, determine.

Advertisement of receiving order.

[46 & 47 Vic., c. 52, s. 13.]

12. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order, the Court by which the order is made and the date of the petition, shall be published in the prescribed manner.

Power to Court to rescind receiving order in certain cases.

[46 & 47 Vic., c. 52, s. 14.]

13. If in any case where a receiving order has been made on a bankruptcy petition it appears to the Court by which the order was made, upon an application by the official assignee, or by any creditor or other person interested, that by reason of the residence of the majority of the creditors in number or value, or the situation of the property of the debtor, in some part of British India or of Her Majesty's dominions elsewhere, beyond the limits within which the Court ordinarily exercises civil jurisdiction, or from any other cause, his estate and effects ought to be administered by some other Court having jurisdiction under this Act or under the Bankrupt or Insolvent Laws of some other part of Her Majesty's dominions, the Court, after such enquiry as to it may seem fit, may rescind the receiving order and stay all proceedings on, or dismiss, the petition, upon such terms, if any, as the Court may think fit.

Proceedings consequent on Order.

Debtor's statement of affairs.

[11 & 12 Vic., c. 21, ss. 6 & 12. 46 & 47 Vic., c. 52, s. 16.]

14. *(1)* When a receiving order is made against a debtor, he shall prepare and submit to the official assignee a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official assignee may require.

(2) The statement shall be so submitted within the following times, namely :—

(i) if the order is made on the petition of the debtor, within seven days from the date of the order;

(ii) if the order is made on the petition of a creditor, within fourteen days from the date of the order.

But the Court may, in either case, for special reasons, extend the time.

(3) If the debtor fails to comply with the requirements of this section, the official assignee may, at the expense of the estate, cause a statement of affairs to be prepared in manner prescribed,

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(Part I.—Proceedings from Act of Bankruptcy to Discharge.—Sections 15-18.)

and, if the default of the debtor was in the opinion of the Court without reasonable excuse, the Court may, on the application of the official assignee, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement prepared under sub-section *(1)* or sub-section *(3)* at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor shall be punished, on the complaint of the official assignee, with imprisonment which may extend to three months, or with fine, or with both.

[New, cf. 46 & 47 Vic., c. 52, s. 16.]

Proposal for composition or scheme of arrangement.

15. The debtor may within the time limited for the submission of the statement of his affairs, or, with the permission of the Court, at any time before he has been adjudged bankrupt, submit to the official assignee a proposal for a composition in satisfaction of the debts due to his creditors or a proposal for a scheme of arrangement of his affairs.

Public Examination of Debtor.

[46 & 47 Vic., c. 52, s. 17.]

Public examination of debtor.

16. *(1)* Where the Court makes a receiving order it shall hold a public sitting, on a day to be appointed by the Court, for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3) The Court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or a legal practitioner authorised by him in this behalf, may question the debtor concerning his affairs and the causes of his failure.

(5) The official assignee shall take part in the examination, and for the purpose thereof may, subject to such directions as may be given by the Court, employ a legal practitioner.

(6) The Court may put such questions to the debtor as it may think expedient.

(7) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him.

(8) Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but that order shall not preclude the Court from directing a further examination of the debtor as to his conduct, dealings or property whenever it may see fit to do so.

Composition or Scheme of Arrangement.

[New, cf. 46 & 47 Vic., c. 52, s. 15.]

Consideration of proposal for composition or scheme of arrangement.

17. *(1)* Where a debtor has submitted a proposal for a composition in satisfaction of the debts due to his creditors or a proposal for a scheme of arrangement of his affairs, the official assignee shall, unless the Court otherwise directs, communicate the proposal in manner prescribed to each creditor mentioned in the debtor's statement of affairs and either summon him to attend a meeting to be held for the consideration of the proposal, or cause a notice to be served on him in manner prescribed requiring him, within a time to be specified in the notice, to notify in writing to the official assignee whether or not he accepts the proposal.

(2) The Court may at any time direct, and one-fourth in value of the creditors mentioned in the debtor's statement of affairs may, within the time specified in the notice served under sub-section *(1)*, by requisition in writing, require, that a meeting of the creditors shall be held for the consideration of the proposal.

(3) With respect to the summoning of and proceedings at a meeting convened under this section, or any subsequent meeting of creditors, the rules in the first schedule shall be observed.

(4) Where the official assignee issues a notice under sub-section *(1)*, requiring a creditor to notify whether or not he accepts a proposal, he shall send with the notice a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official assignee may think fit to make.

[cf. 46 & 47 Vic., c. 52, s. 18.]

Acceptance, approval and effect of composition or scheme.

18. *(1)* The composition or scheme proposed by the debtor shall not be deemed to be accepted by the creditors unless—

(a) where a meeting has been convened under the last foregoing section, the creditors who have proved resolve, by special resolution passed at that meeting or an adjournment thereof, that the proposal shall be accepted, or,

(b) where a meeting has not been convened under that section, a majority in number representing three-fourths in value of the creditors who have proved notify in writing to the official assignee their acceptance of the proposal.

(2) The composition or scheme shall not be binding on the creditors unless, after its acceptance by them, it is approved by the Court.

(3) The debtor or the official assignee may, after the conclusion of the public examination of the debtor, apply to the Court to approve any composition or scheme which has been accepted by the creditors, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(4) The Court shall, before approving a composition or scheme, hear a report of the official assignee as to the terms of the composition or scheme and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(5) If the Court is of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required under this Act where the debtor is adjudged bankrupt to refuse his discharge, the Court shall, or if any such facts are proved as would under this Act justify the Court in refusing, qualifying or suspending the debtor's discharge, the Court

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may in its discretion, refuse to approve the composition or scheme.

(6) If the Court approves the composition or scheme, the approval shall be testified in the prescribed manner.

(7) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy.

(8) A certificate of the official assignee that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(9) The provisions of a composition or scheme under this section may be enforced by the Court on application by any person interested, and an order of the Court made on the application may be executed as if it were a decree.

(10) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot, in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the date of the adjudication, shall be provable in the bankruptcy.

(11) If, under or in pursuance of a composition or scheme, the official assignee or a special assignee is appointed to administer the debtor's property or manage his business, Part IV or Part V of this Act, as the case may be, and such other portions of the Act as may be prescribed, shall apply to the assignee as if he were an assignee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt" and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor and an order approving the composition or scheme.

(12) Part III of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being given to the words "assignee," "bankruptcy," "bankrupt" and "order of adjudication" as in the last preceding sub-section.

(13) A composition or scheme shall not be approved by the Court unless it provides for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(14) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

19. Notwithstanding the acceptance and approval of a composition or scheme, the composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Limitation of effect of composition or scheme.

Adjudication of Bankruptcy.

20. *(1)* At the time of making a receiving order, or at any time thereafter, the Court may, on the application of the debtor himself, adjudge him bankrupt. The application may be made orally and without notice.

Adjudication of bankruptcy. [Bankruptcy Rules, 1886, para. 155.]

(2) Where a receiving order is made against a debtor, then, if a composition or scheme is not accepted and approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt. [46 & 47 Vic., c. 52, s. 20.]

(3) When a debtor is adjudged bankrupt his property shall become divisible among his creditors and shall vest in the official assignee. [11 & 12 Vic., c. 21, ss. 7 & 11.]

(4) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, the date of the adjudication and the Court by which the adjudication is made, shall be published in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication. [11 & 12 Vic., c. 21, s. 35.]

21. *(1)* Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

Power to accept composition or scheme after bankruptcy adjudication. [46 & 47 Vic., c. 52, s. 23.]

(2) If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

22. *(1)* Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend any meeting of his creditors which the official assignee may require him to attend, and shall submit to such examination and give such information as the meeting may require.

Duties of debtor as to discovery and realization of property. [46 & 47 Vic., c. 52, s. 24.]

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(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, wait at such times and places on the official assignee or special manager, execute such powers-of-attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors, as may be reasonably required by the official assignee or special manager or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official assignee or special manager, or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official assignee or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

[46 & 47 Vic., c. 52, s. 25.]

Arrest of debtor under certain circumstances.

23. *(1)* The Court may, by warrant addressed to any police-officer or prescribed officer of the Court, cause a debtor to be arrested, and any books, papers, money and goods in his possession to be seized, and him and them to be safely kept as prescribed until such time as the Court may order, under the following circumstances :—

(a) if, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he has absconded or is about to abscond with a view of avoiding service of a bankruptcy petition or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarrassing proceedings in bankruptcy against him ;

(b) if, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official assignee, or that there is probable reason for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy ;

(c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any property in his possession above the value of fifty rupees without the leave of the official assignee ;

(d) if, without good cause shown, he fails to attend any examination ordered by the Court.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of this Act relating to fraudulent preferences.

[46 & 47 Vic., c. 52, s. 26.]

Re-direction of debtor's letters and telegrams.

24. Where a receiving order is made against a debtor, the Court, on the application of the official assignee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, post letters and telegrams addressed to the debtor at any place or places mentioned in the order for re-direction shall be re-directed, sent or delivered by the Postal and Telegraph authorities in British India to the official assignee, or otherwise as the Court directs ; and the same shall be done accordingly.

[46 & 47 Vic., c. 52, s. 27.]

Discovery of debtor's property.

25. *(1)* The Court may, on the application of the official assignee, or of any creditor who has proved his debt, at any time after a receiving order has been made against a debtor, summon before it the debtor, or any person known or suspected to have in his possession any property belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property ; and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him to be apprehended and brought up for examination.

(3) The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

(4) If on the examination of any such person it appears to the Court that he is indebted to the debtor, the Court may, on the application of the official assignee, order him to pay to the official assignee, at such time and in such manner as to the Court seems expedient, the amount in which he is indebted, or any part thereof, either in full discharge of the whole amount or not, as the Court thinks fit, with or without costs of the examination.

(5) If on the examination of any such person it appears to the Court that he has in his possession any property belonging to the debtor, the Court may, on the application of the official assignee, order him to deliver to the official assignee that property, or any part thereof, at such time, in such manner and on such terms as to the Court may seem just.

Discharge of Bankrupt.

[11 Vict., c. 21, s. 6; 46 & 47 Vic., c. 52, s. 28.]

Discharge of bankrupt.

26. *(1)* A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until

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the public examination of the bankrupt is concluded. The application shall be heard in open Court.

(2) On the hearing of the application the Court shall take into consideration a report of the official assignee as to the bankrupt's conduct and affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property:

Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any offence under this Act, or under section 421, 422, 423 or 424 of the Indian Penal Code or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order, or suspend the operation of the order for a specified time, or grant an order of discharge subject to such conditions as aforesaid.

(3) The facts hereinbefore referred to are—

(a) that the bankrupt, if a trader, has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy or within such shorter period immediately preceding that event as the Court may deem reasonable in the circumstances of the case;

(b) that the bankrupt has continued to trade after knowing himself to be insolvent;

(c) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;

(d) that the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living;

(e) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any suit or other legal proceeding properly brought against him;

(f) that the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(g) that the bankrupt has on any previous occasion been adjudged bankrupt or made under any enactment in force in any part of Her Majesty's dominions a composition or arrangement with his creditors;

(h) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) For the purposes of this section the report of the official assignee shall be *primâ facie* evidence of the statements therein contained.

(5) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent one month at least before the day so appointed to each creditor who has proved, and the Court may hear the official assignee, and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

(6) The Court may, in making an order of discharge, pass a decree against the debtor in favour of the official assignee for any balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge; but in that case the decree shall not be executed without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for payment of his debts. [11 & 12 Vic., c. 21, ss. 85 & 86.]

(7) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the official assignee may require in the realization and distribution of such of his property as is vested in the official assignee, and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation. [11 & 12 Vic., c. 21, s. 58.]

(8) Where the Court refuses the discharge of the bankrupt, it may, after such time and in such circumstances as may be authorised by general rules, permit him to renew his application for an order of discharge.

Fraudulent settlements.

27. In either of the following cases, that is to say:— [46 & 47 Vic., c. 52, s. 29.]

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife),

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that the settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order of discharge.

28. *(1)* An order of discharge shall not release the bankrupt from any debt on a recognisance, or from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against an enactment relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail-bond entered into for the appearance of any person prosecuted for any such offence; and the bankrupt shall not be discharged from these excepted debts unless the Government certifies in writing its consent to his being discharged therefrom. [11 & 12 Vic., c. 21, ss. 48 & 62. 46 & 47 Vic., c. 52, s. 30.]

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(2) An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, or from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(4) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein; and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

[11 & 12 Vic., c. 21, ss. 59 & 60.]

(5) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

PART II.

DISQUALIFICATIONS OF BANKRUPT.

[46 & 47 Vic., c. 52, ss. 32 & 34.]

29. *(1)* Where a debtor is adjudged bankrupt he shall, subject to the provisions of this section, be disqualified for—

Disqualifications of bankrupt.

(a) being appointed or acting as a Member of any Legislative Council constituted under the Indian Councils Act, 1861;

24 & 25 Vic., c. 67.

(b) being appointed or acting as a Justice of the Peace, Judge or Magistrate;

(c) being appointed or acting as a member of any local authority.

(2) The disqualifications to which a bankrupt is subject under this section shall be removed and cease if and when—

(a) the adjudication of bankruptcy against him is annulled; or

(b) he obtains from the Court his discharge with a certificate to the effect that his bankruptcy was caused by misfortune without any misconduct on his part.

The Court may grant or withhold the certificate as it thinks fit, but a refusal of the certificate shall be subject to appeal.

(3) If a person is adjudged bankrupt whilst holding the office of Member of a Legislative Council, Justice of the Peace, Judge, Magistrate or member of a local authority, his office shall thereupon become vacant.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

[11 & 12 Vic., c. 21, s. 41. 46 & 47 Vic., c. 52, s. 37.]

30. *(1)* Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy.

Description of debts provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the receiving order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

(4) An estimate shall be made by the official assignee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

[11 & 12 Vic., c. 21.]

(5) Any person aggrieved by any estimate made by the official assignee as aforesaid may appeal to the Court.

(6) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall for the purposes of this Act include any compensation for work or labour done, and any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion.

[11 & 12 Vic., c. 21, s. 39.]

31. Where there have been mutual credits, mutual debts or other mutual dealings between a debtor against whom a receiving order is made under this Act and any other person proving or claiming to prove a debt under the receiving order, an account shall be taken by, or under the orders of, the Court of what is due from the one party to the other in respect of those mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him.

Mutual credit and set-off.

[11 & 12 Vic., c. 21, s. 40.]

32. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of

Rules as to proof of debts.

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(Part III.—Administration of Property.—Sections 33-37.)

proofs, and the other matters referred to in the second schedule, the rules in that schedule shall be observed.

[46 & 47 Vic., c. 52, s. 40.]

33. *(1)* In the distribution of the property of a bankrupt there shall be paid in priority to all other debts—

Priority of debts.

(a) all revenue, taxes, cesses and rates, whether payable to Her Majesty, to any local authority or otherwise, due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before that date;

[11 & 12 Vic., c. 21, s. 46.]

(b) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding five hundred rupees for each clerk or servant; and

(c) all wages of any labourer or workman, not exceeding five hundred rupees for each, whether payable for time or piece-work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

(2) The foregoing debts shall rank equally among themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions among themselves.

[Sch. IX of Act, s. 262.]

(3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid *pari passu*.

(5) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of six per centum per annum on all debts proved in the bankruptcy.

[46 & 47 Vic., c. 52, s. 41.]

34. *(1)* Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either the bankrupt or the apprentice or clerk gives notice in writing to the official assignee to that effect, be a complete discharge of the contract of apprenticeship or articles of agreement; and, if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the official assignee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as the official assignee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the contract or articles before the commencement of the bankruptcy, and to the other circumstances of the case.

Preferential claim in case of apprenticeship.

(2) Where it appears expedient to the official assignee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of the apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the contract of apprenticeship or articles of agreement to some other person.

[11 & 12 Vic., c. 21, s. 22. 46 & 47 Vic., c. 52, s. 42.]

35. *(1)* The landlord or other person to whom any rent is due from the bankrupt may, at any time, either before or after the commencement of the bankruptcy, exercise his right of distraint (if any) upon the property of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if the distress for rent be levied after the commencement of the bankruptcy it shall be available only for three months' rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available.

Power to landlord to distrain for rent.

(2) For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a deceased person who dies insolvent.

Property available for Payment of Debts.

[46 & 47 Vic., c. 52, s. 43.]

36. The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but a bankruptcy petition, receiving order or adjudication shall not be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Relation back of assignee's title.

[46 & 47 Vic., c. 52, s. 44.]

37. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:—

Description of bankrupt's property divisible amongst creditors.

(1) property held by the bankrupt on trust for any other person;

[11 & 12 Vic., c. 21, s. 7.]

(2) the tools (if any) of his trade and the necessary wearing-apparel, bedding and other such necessaries of himself, his wife and children, to a value, inclusive of tools and apparel and the other things aforesaid, not exceeding two hundred rupees in the whole:

But it shall comprise the following particulars:—

[11 & 12 Vic., c. 21, s. 7.]

(3) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge;

(4) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bank-

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rupt for his own benefit at the commencement of his bankruptcy or before his discharge; and

[11 & 12 Vic., c. 21, s. 23.]

(5) all moveable property being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed moveable property within the meaning of this section.

Effect of Bankruptcy on antecedent Transactions.

[Cf. Act XIV of 1882, s. 295. 46 & 47 Vic., c. 52, s. 45.]

38. *(1)* Where execution of a decree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the official assignee, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor, has been given to the Court executing the decree.

Restriction of rights of creditor under execution.

(2) Nothing in this section shall affect the rights of a mortgagee or incumbrancer of property against which a decree is executed.

[46 & 47 Vic., c. 52, s. 46.]

39. *(1)* Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that a receiving order has been made against the debtor, the Court shall, on application, direct the property to be delivered to the official assignee, but the costs of the execution shall be a charge on the property so delivered, and the official assignee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

Duties of Court executing decree as to goods taken in execution.

(2) A person who in good faith purchases the property of a debtor under a sale in execution shall in all cases acquire a good title to it against the official assignee.

[46 & 47 Vic., c. 52, s. 47.]

40. *(1)* Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the official assignee, and shall if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the official assignee unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement and that the interest of the settlor in the property had passed to the trustee of the settlement on the execution thereof.

Avoidance of voluntary settlements.

(2) Any covenant or contract made in consideration of marriage, for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent in possession or remainder, and not being money or property of or in right of his wife, shall, on his becoming bankrupt before the money or property has been actually paid or transferred pursuant to the covenant or contract, be void against the official assignee.

(3) "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

[11 & 12 Vic., c. 21, s. 2 46 & 47 Vic., c. 52, s. 4

41. *(1)* Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving that creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the official assignee.

Avoidance of preferences in certain cases.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

[46 & 47 c. 52, s. 4

42. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate in the case of a bankruptcy—

Protection of *bonâ fide* transactions without notice.

(a) any payment of the bankrupt to any of his creditors,

(b) any payment or delivery to the bankrupt,

(c) any conveyance or assignment by the bankrupt for valuable consideration, or

(d) any contract, dealing or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely:—

(1) the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

(2) the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time.

Realization of Property.

[11 & 1 c. 21, s. 46 & 47 c. 52, s. 4

43. *(1)* The official assignee shall, as soon as may be, take possession of the deeds, books and documents of the bankrupt, and all other parts of his property capable of manual delivery.

Possession of property by assignee.

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(Part III.—Administration of Property.—Sections 44-47.)

(2) The official assignee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed under section 503 of the Code of Civil Procedure, and shall have such of the powers conferable on a receiver under that section as may be prescribed; and the Court may on his application enforce such acquisition or retention accordingly.

of 1882.

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the official assignee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

[12 Vic., s. 25.]

(4) Where any part of the property of the bankrupt consists of things in action, those things shall be deemed to have been duly assigned to the official assignee.

(5) Any treasurer or other officer, or any banker, attorney or agent of a bankrupt, shall pay and deliver to the official assignee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the bankrupt or the official assignee. If he does not, he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the official assignee.

[47 Vic., s. 51.]

44. Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt or of any other person, and with a view to the seizure thereof may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and, where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any police-officer or officer of the Court, who may execute it according to its tenor.

Seizure of property of bankrupt.

[22 Vic., s. 27. 27 Vic., s. 53.]

45. *(1)* Where a bankrupt is an officer of the army or navy or of Her Majesty's Indian marine service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the official assignee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as, subject to the provisions of section 266 of the Code of Civil Procedure, the Court, on the application of the official assignee, may, by order under section 268 of that Code, direct.

Appropriation of portion of pay or other income to creditors.

of 1882.

(2) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, the Court, on the application of the official assignee, shall from time to time, subject to the provisions of section 266 of the said Code and of the Pensions Act, 1871, make such order as it thinks just for the payment of the salary or income, or of any part thereof, to the official assignee, to be applied by him in such manner as the Court may direct.

of

(3) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt.

46. The property of a debtor who has been adjudged bankrupt shall pass from official assignee to official assignee, and shall vest in the official assignee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

[11 & 12 Vic., c. 21, s. 7. 46 & 47 Vic., c. 52, s. 54. 11 & 12 Vic., c. 21, s. 20.]

Vesting and transfer of property.

47. *(1)* Where any part of the property of the bankrupt consists of any tenancy burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the official assignee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within three months after the adjudication of bankruptcy, disclaim the property:

[46 & 47 Vic., c. 52, s. 55.]

Disclaimer of onerous property.

Provided that, where any such property has not come to the knowledge of the official assignee within one month after the adjudication, he may disclaim the property at any time within two months after he first became aware thereof.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the official assignee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the official assignee from liability, affect the rights or liabilities of any other person.

(3) The official assignee shall not be entitled to disclaim a tenancy without the leave of the Court, except in any cases which may be prescribed by general rules; and the Court may, before or on granting the leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave, and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy, as the Court thinks just.

(4) The official assignee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to him by any person interested in the property requiring him to decide whether he will disclaim or not, and he has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the official assignee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the official assignee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to

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(Part III.—Administration of Property.—Sections 48-50.)

the Court may seem equitable; and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The Court may, on application by any person either claiming any interest in any disclaimed property, or being under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and, on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided always that, where the property disclaimed is a tenancy, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-tenant or as mortgagee by demise, except upon the terms of making that person subject to the same liabilities and obligations as the bankrupt was subject to under the tenancy in respect to the property at the date when the bankruptcy petition was filed, and any under-tenant or mortgagee declining to accept a vesting order upon these terms shall be excluded from all interest in and security upon the property; and if there is no person claiming under the bankrupt who is willing to accept an order upon these terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person bound either personally or in a representative character, and either alone or jointly with the bankrupt, to discharge the tenant's liabilities and obligations, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

[46 & 47 Vic., c. 52, s. 56.]

48. *(1)* Subject to the provisions of this Act, the official assignee may do all or any of the following things:—

Powers of assignee as to dealing with property.

[11 & 12 Vic., c. 21, s. 31.]

(a) sell all or any part of the property of the bankrupt (including the goodwill of his business, if any, and the book debts due or growing due to him) by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels;

(b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;

[11 & 12 Vic., c. 21, s. 30.]

(d) exercise any powers the capacity to exercise which is vested in the official assignee under this Act, and execute any powers-of-attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Act;

[Cf. Act XXXI of 1854, s. 4.]

(e) deal with any property to which the bankrupt is beneficially entitled as tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple in the same manner as the bankrupt might have dealt with it.

[3 & 4 Will. IV, c. 74, s. 65.]

(2) Any dealing by an official assignee under clause *(e)* of sub-section *(1)* with any property to which the bankrupt is before his discharge entitled as in that clause mentioned shall, although the bankrupt be dead at the time of that dealing, be as valid and have the same operation as if the bankrupt were then alive.

[46 & 47 Vic., c. 52, s. 57.]

49. The official assignee may, subject to any general or special orders of the Court, do all or any of the following things:—

Powers exercisable by assignee subject to orders of Court.

(1) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;

[11 & 12 Vic., c. 21, s. 29.]

(2) bring, institute or defend any suit or other legal proceeding relating to the property of the bankrupt;

(3) employ a legal practitioner or other agent to take any proceedings or do any business;

(4) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as he thinks fit;

(5) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

[11 & 12 Vic., c. 21, s. 28.]

(6) refer any dispute to arbitration, and compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;

(7) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;

(8) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the official assignee by any person or by the official assignee on any person;

(9) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

Distribution of Property.

[11 & 12 Vic., c. 21, s. 27; 16 & 17 Vic., c. 52, s. 8.]

50. *(1)* Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the official assignee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

Declaration and distribution of dividends.

(2) The first dividend, if any, shall be declared and be payable within six months after the adjudication, unless the official assignee satisfies the

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Court that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and be payable at intervals of not more than six months.

(4) Before declaring a dividend the official assignee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debt.

(5) When the official assignee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

Joint and separate dividends.

51. *(1)* Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of the official assignee or any person interested, be declared together; and the expenses of and incident to those dividends shall be fairly apportioned by the official assignee between the joint and separate properties, regard being had to the work done for and to the benefit received by each property.

Provision for creditors residing at a distance, &c.

52. In the calculation and distribution of a dividend the official assignee shall make provision for debts provable in bankruptcy appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the official assignee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

Right of creditor who has not proved debt before declaration of a dividend.

53. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the official assignee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

Final dividend.

54. When the official assignee has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in bankruptcy, he shall, with the leave of the Court, declare a final dividend; but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grants him further time for establishing his claim, then on the expiration of that further time, the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

No suit for dividend.

55. No suit for a dividend shall lie against the official assignee, but if the official assignee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application. [11 & 12 Vic., c. 21, s. 45. 46 & 47 Vic., c. 52, s. 63.]

Power to allow bankrupt to manage property, and allowance to bankrupt for maintenance or service.

56. *(1)* The official assignee may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the official assignee may direct. [46 & 47 Vic., c. 52, s. 64.]

(2) The official assignee may, from time to time, make such allowance as he thinks just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but the Court may reduce any such allowance and limit the time for which it may be made. [11 & 12 Vic., c. 21, s. 47.]

Right of bankrupt to surplus.

57. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges and expenses of the proceedings under the bankruptcy petition. [46 & 47 Vic., c. 52, s. 65.]

PART IV.

OFFICIAL ASSIGNEES.

Appointment and Removal.

Appointment and removal of official assignees of debtors' estates.

58. *(1)* The Chief Justice of each of the High Courts of Judicature at Fort William, Madras and Bombay may from time to time appoint such person as he thinks fit to the office of official assignee of debtors' estates for that Court, and may, with the concurrence of a majority of the other Judges of the Court, remove the person for the time being holding that office for any of the following causes, namely, unwillingness to act, removal from out of the jurisdiction of the Court, incapacity or misconduct. [11 & 12 Vic., c. 21, s. 14. 46 & 47 Vic., c. 52, s. 66 (1).]

(2) The Local Government may in like manner appoint such person as it thinks fit to the office of official assignee of debtors' estates for any other Court having bankruptcy jurisdiction under this Act, and may remove the person for the time being holding that office.

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(Part IV.—Official Assignees.—Sections 59-64.)

(3) Notwithstanding anything, in sub-sections *(1)* and *(2)*, the persons substantively or temporarily holding the office of official assignee immediately before the commencement of this Act in the Courts for the Relief of Insolvent Debtors at Calcutta, Madras and Bombay under the 11 & 12 Vic., cap. 21 *(an Act to consolidate and amend the Laws relating to Insolvent Debtors in India)*, and in the Court of the Recorder of Rangoon under that statute as applied by the Burma Courts Act, 1875, shall, without further appointment for that purpose, become the official assignees, substantive or temporary, as the case may be, under this Act in the High Courts at Fort William, Madras and Bombay and in the Court of the Recorder of Rangoon, respectively.

XVII of 1875.

Duties.

[46 & 47 Vic., c. 52, s. 68.]

Functions of official assignee.

59. *(1)* The duties of an official assignee shall have relation both to the conduct of the debtor and to the administration of his estate.

(2) An official assignee may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act administer oaths.

[46 & 47 Vic., c. 52, s. 69.]

Duties of official assignee as regards the debtor's conduct.

60. As regards the debtor, it shall be the duty of the official assignee—

(1) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitute an offence under this Act or under section 421, 422, 423 or 424 of the Indian Penal Code or any amendment thereof, or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

XLV of 1860.

(2) to make such other reports concerning the conduct of the debtor as the Court may direct or as may be prescribed;

(3) to take such part as may be directed by the Court in the public examination of the debtor; and

(4) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Court may direct or as may be prescribed;

[46 & 47 Vic., c. 52, s. 70.]

Duties of official assignee as to debtor's estate.

61. *(1)* As regards the estate of a debtor it shall be the duty of the official assignee—

(a) where a special assignee has not been appointed, to act as receiver of the debtor's estate, and, where a special manager has not been appointed, as manager thereof;

(b) to authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) to summon and preside at the meeting mentioned in section 17;

(d) to report to the creditors as to any proposal which the debtor has made with respect to the mode of liquidating his affairs;

(e) to advertise the receiving order, the date of the debtor's public examination, and such other matters as it may be necessary to advertise.

(2) For the purpose of his duties as interim receiver or manager the official assignee shall have such of the powers conferable on a receiver appointed under section 503 of the Code of Civil Procedure as may be prescribed.

(3) The official assignee shall account to the Court and pay over all moneys and deal with all securities in such manner as, subject to the provision of this Act, the Court, from time to time, directs.

Remuneration.

Remuneration of official assignee.

62. *(1)* The remuneration to be paid to the official assignee shall be fixed by general rules.

(2) The rules shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(3) No remuneration whatever beyond that referred to in sub-section *(1)* shall be received by an official assignee as such.

Costs.

Allowance and taxation of costs.

63. *(1)* No payment shall be allowed in the accounts of the official assignee or manager in respect of the performance by any other person of the ordinary duties which are required by this Act or the rules made under this Act to be performed by himself.

(2) All bills and charges of legal practitioners, managers, accountants, auctioneers, brokers and other persons shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the accounts of the official assignee without leave of the Court given after the bills and charges have been taxed.

(3) Every such person shall, on request by the official assignee (which request the official assignee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the prescribed officer, and if he fails to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the official assignee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the official assignee personally as against the estate.

Receipts, Payments, Accounts and Audit.

Bankruptcy Estates and Dividends Accounts.

64. *(1)* Two accounts, called respectively the Bankruptcy Estates Account and the Bankruptcy Dividends Account, shall be kept by the Court with such Government treasury, and in accordance with such rules, as the Governor General in Council may from time to time prescribe.

(2) Subject to those rules, the Bankruptcy Estates Account shall be an account of money held by the Court for estates in bankruptcy, and the Bankruptcy Dividends Account shall be an account of declared dividends remaining unclaimed or undistributed.

(3) The said accounts shall be opened as soon as may be after the passing of this Act.

(4) The official assignee shall, in such manner and at such times as the Court, with the sanction

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(Part IV.—Official Assignees.—Sections 65-71.)

of the Governor General in Council, directs, pay the money received by him on account of estates in bankruptcy into the Court for credit to the Bankruptcy Estates Account, and the Court shall furnish him with a certificate of receipt of the money so paid.

Vic., 34.] *(5)* If an official assignee at any time retains for more than ten days a sum exceeding five hundred rupees, or such other sum as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall be liable to pay any expenses occasioned by reason of his default, and to submit to such other consequences as may be prescribed.

(6) All payments out of money standing to the credit of the Bankruptcy Estates Account or the Bankruptcy Dividends Account shall be made by the treasury in the prescribed manner on the order of the prescribed officer.

Vic., 5.] Assignee not to pay into private account.

65. An official assignee shall not pay any sums received by him as official assignee into his private banking account.

Vic., 5.] Investment of surplus funds.

66. *(1)* Whenever the balance standing to the credit of an estate in the Bankruptcy Estates Account exceeds ten thousand rupees, the Court may order such part thereof as is not required for the time being to answer demands in respect of the estate, or for transfer to the Bankruptcy Dividends Account in respect of dividends declared, to be invested in Government securities.

(2) When the Court has made an order under sub-section *(1)*, it shall notify the order to such officer as the Governor General in Council may appoint in this behalf, and pay over to the officer the sum which it has ordered to be invested or any part thereof as the officer may require, and the officer may invest the said sum or part thereof in Government securities to be placed to the credit of the estate.

(3) Whenever any part of the money so invested is, in the opinion of the Court, required to answer any demands in respect of the estate or for transfer to the Bankruptcy Dividends Account, the Court shall notify to the officer the amount so required and the officer shall thereupon repay to the Court such sum as may be required to the credit of the estate, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(4) Interest on investments under this section shall be paid to the Bankruptcy Estates Account to the credit of the estate.

., Audit of assignee's accounts.

67. *(1)* Every official assignee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, submit to the Court, or as it directs, an account of his receipts and payments as such official assignee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The Court shall cause the accounts so submitted to be audited, by such officer as the Governor General in Council may appoint in this behalf, and for the purposes of the audit the official assignee shall furnish the officer with such vouchers and information as the officer may require, and the officer may at any time require the production of and inspect any books or accounts kept by the official assignee.

(4) When any such account has been audited, a copy thereof shall be filed in the Court, and shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

Assignee to furnish list of creditors. [46 & 47 Vic., c. 52, s. 79.]

68. The official assignee shall, whenever required by any creditor so to do, and on payment by the creditor of the prescribed fee, furnish and transmit to the creditor by post a list of the creditors, showing in the list the amount of the debt due to each of the creditors.

Books to be kept by assignee. [46 & 47 Vic., c. 52, s. 80.]

69. The official assignee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed; and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent, inspect any such books.

Periodical statement of proceedings. [46 & 47 Vic., c. 52, s. 81.]

70. *(1)* Every official assignee shall, from time to time, as may be prescribed, and not less than once in every year, during the continuance of the bankruptcy, submit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The Court shall cause the statement so submitted to be examined, and shall call the official assignee to account for any misfeasance, neglect or omission which may appear on the statement or in his accounts or otherwise, and may require the official assignee to make good any loss which the estate of the bankrupt may have sustained by reason of the misfeasance, neglect or omission.

Release.

Release of assignee. [46 & 47 Vic., c. 52, s. 82.]

71. *(1)* When the official assignee has realized all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the proceedings in bankruptcy, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has vacated or been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the official assignee, and shall either grant or withhold the release accordingly.

(2) Where the release of an official assignee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the official assignee with the consequences of any act or default which he may have done or made contrary to his duty.

(3) An order of the Court releasing the official assignee shall discharge him from all liability in

respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as official assignee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Official Name.

[46 & 47 Vic., c. 52, s. 83.]

Name of assignee.

72. The official assignee may sue and be sued by the name of "the official assignee of the property of , a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Vacation of Office on Insolvency.

[46 & 47 Vic., c. 52, s. 85.]

Office of assignee vacated by insolvency.

73. If a receiving order is made against an official assignee, he shall thereby vacate the office of official assignee.

Control.

[46 & 47 Vic., c. 52, s. 89.]

Discretionary powers of assignee and control thereof.

74. *(1)* Subject to the provisions of this Act, the official assignee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by any resolution of the creditors at a meeting.

(2) The official assignee may, from time to time, summon meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution at any meeting, or the Court may direct, or whenever requested in writing to do so by one-fourth in value of the creditors.

(3) The official assignee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Act, the official assignee shall use his own discretion in the management of the estate and its distribution among the creditors.

[46 & 47 Vic., c. 52, s. 90.]

Appeal to Court against assignee.

75. If the bankrupt or any of the creditors, or any other person, is aggrieved by any act or decision of the official assignee, he may apply to the Court, and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

[46 & 47 Vic., c. 52, s. 91.]

Control of Court over assignee.

76. *(1)* In the event of any official assignee not faithfully performing his duties and duly observing all the requirements imposed on him by any enactment, rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any official assignee to answer any inquiry made by it in relation to any bankruptcy in which he is engaged, and may examine him or any other person on oath concerning the bankruptcy.

(3) The Court may also direct a local investigation to be made of the books and vouchers of the official assignee.

PART V.

Special Assignees.

[11 & 12 Vic., c. 21, s. 46 & 46 Vic., c. 52, s. 92.]

Appointment and removal of special assignee.

77. *(1)* If any creditor desires that any person other than the official assignee be appointed assignee of the bankrupt's estate, he may, at any time after the debtor has been adjudged bankrupt, apply to the Court to summon a meeting of the creditors for the purpose of considering the appointment of a special assignee.

[No

(2) The Court may in any case, and shall if the creditor, or he and other creditors applying with him, represent one-fourth in value of the creditors, cause a meeting to be summoned for that purpose.

[No

(3) At the meeting convened under sub-section *(2)* the creditors may, by ordinary resolution, appoint a special assignee of the property of the bankrupt.

(4) If a special assignee is appointed, he shall give security in manner prescribed to the satisfaction of the Court; and the Court, if satisfied with the security, shall certify that his appointment has been duly made, unless it disapproves of the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as assignee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generally.

[46 c. sub

(5) The appointment of a special assignee shall take effect as from the date of the certificate.

[46 c. sub

(6) If the Court disapproves of the appointment made at the meeting summoned under sub-section *(2)*, it shall cause a further meeting of the creditors to be summoned for the purpose of appointing some other person to be special assignee.

[46

(7) If either at the meeting summoned under sub-section *(2)* or at the further meeting summoned under sub-section *(6)* the creditors do not, by ordinary resolution, appoint a special assignee, or if at the further meeting they make an appointment of which the Court disapproves on any of the grounds mentioned in sub-section *(4)*, the official assignee shall be the assignee throughout the bankruptcy.

[46

(8) Subject to the provisions of this Act with respect to security and the approval of the Court, the creditors, if they think fit, may, by ordinary resolution, appoint more persons than one to the office of special assignee; and, where more persons than one are appointed, the creditors shall declare whether any act required or authorised to be done by the special assignee is to be done by all or any one or more of those persons, all of whom are in this Act included under the term "special assignee," and shall be joint-tenants of the property of the bankrupt with right of survivorship.

(9) Where the Court disapproves of the appointment of any one of more persons than one

The Indian Bankruptcy Bill, 1886.
(Part V.—Special Assignees.—Section 78.)

appointed to the office of special assignee, it shall be deemed, subject to the next following sub-section, to disapprove of the appointment of all of them.

[47 Vic., c. 84.] *(10)* Provided, with respect to sub-sections *(6)*, *(7)*, *(8)* and *(9)*, that, where the creditors resolve to appoint a special assignee, or more persons than one to the office of special assignee, they may appoint one or more persons to be substituted in succession in the place of the person first named, or of one or more of the persons first named, in the event of his or their declining to accept the office of special assignee, or failing to give security, or not being approved of by the Court.

[47 Vic., c. 86.] *(11)* The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a special assignee appointed by them, and may, at the same or any subsequent meeting, appoint another person to fill the vacancy as hereinafter provided in the case of a vacancy in the office of special assignee.

[47 Vic., c. 86.] *(12)* If the Court is of opinion that a special assignee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Court may remove him from his office.

[47 Vic., c. 87.] *(13)* If a vacancy occurs in the office of special assignee, the creditors at a meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

[47 Vic., c. 87.] *(14)* The official assignee shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

[47 Vic., c. 87.] *(15)* If the creditors do not within four weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official assignee shall be the assignee during the remainder of the bankruptcy.

[47 Vic., c. 87.] *(16)* During any vacancy in the office of special assignee the official assignee shall act as assignee.

Status of special assignee.

78. Where a special assignee has been appointed under the last foregoing section, the property of the bankrupt shall vest in the special assignee without any conveyance or assignment for the purpose; and, save as provided by any general rules and any general or special orders of the Court, all the foregoing provisions of this Act referring to an official assignee shall, so far as may be, be construed as referring to the special assignee, subject to the following provisions, namely:—

(a) the references to the official assignee in sections 8, 9, 11 and 13 to 18 (both inclusive), section 20, sub-section *(3)*, section 26, sub-sections *(2)*, *(4)* and *(6)*, sections 58 to 62 (both inclusive), and section 77, apply to the official assignee only;

[47 Vic., c. 87.] *(b)* the special assignee shall not do any of the things mentioned in section 49 without the permission of the Court, or, if the Court so directs, of the prescribed officer, given on an application to the Court or to the prescribed officer, as the case may be, for permission to do the particular thing or things in the specified case or cases stated in the application;

[47 Vic., c. 52.] *(c)* with his application to the Court for leave to declare a final dividend under section 54, the special assignee shall, when he has not realised all the property of the bankrupt, submit a report by the prescribed officer as to the sufficiency of the grounds for his opinion that he has realised so much of the property of the bankrupt as can be realised without needlessly protracting the proceedings in bankruptcy;

(d) the special assignee shall not, without the previous sanction of the Court, or, if the Court so directs, of the prescribed officer, appoint the bankrupt himself to discharge any of the duties mentioned in sub-section *(1)* of section 56, or make any allowance to the bankrupt under sub-section *(2)* of that section; [46 & 47 Vic., c. 52, s. 64.]

(e) the remuneration, if any, of the special assignee shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend, and it shall be fixed by the creditors, by ordinary resolution, at the meeting at which he is appointed, but may be reduced by the Court, and shall be so adjusted that the expense of administration by a special assignee shall not exceed the expense of administration by the official assignee; [46 & 47 Vic., c. 52, s. 72.]

(f) the special assignee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any legal practitioner, auctioneer or any other person that may be employed about the bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of the remuneration payable to him in any capacity, to the bankrupt or to any legal practitioner or other person that may be employed about the bankruptcy; [46 & 47 Vic., c. 52, s. 72.]

(g) when no remuneration has been voted to the special assignee, he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the prescribed officer may allow; [46 & 47 Vic., c. 52, s. 72.]

(h) the special assignee shall supply the official assignee with such information, and give him such access to, and facilities for inspecting, the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official assignee to perform his duties under this Act; [46 & 47 Vic., c. 52, s. 68.]

(i) where the special assignee has not previously resigned or vacated or been removed from his office, his release under section 71 shall operate as a removal of him from his office; [46 & 47 Vic., c. 52, s. 82.]

(j) the vote of the special assignee, or of his partner, clerk, legal practitioner or legal practitioner's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the special assignee. [46 & 47 Vic., c. 52, s. 88.]

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(Part VI.—Constitution, Procedure and Powers of Court.—Sections 79-87.)

PART VI.

CONSTITUTION, PROCEDURE AND POWERS OF COURT.

Jurisdiction.

[46 & 47 Vic., c. 52, s. 92.]

Courts having jurisdiction in bankruptcy.

79. *(1)* The Courts having jurisdiction in bankruptcy under this Act shall be—

(*a*) the High Courts of Judicature at Fort William, Madras and Bombay;

(*b*) the Court of the Recorder of Rangoon; and

(*c*) subject to any limitation which the Governor General in Council may impose with respect to the extent of the jurisdiction to be exercised, such other Civil Courts as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, appoint in this behalf in the territories administered by it.

[New.]

Local limits of their jurisdiction.

80. For the purposes of this Act the local limits of the jurisdiction of the said Courts shall, subject to the provisos to section 4, sub-section *(1)*, be the following, namely:—

(*a*) the local limits of the jurisdiction of each of the said High Courts of Judicature shall be the local limits for the time being of its ordinary original civil jurisdiction;

(*b*) the local limits of the jurisdiction of the Court of the Recorder of Rangoon shall comprise the towns of Rangoon, Moulmein, Akyab and Bassein;

(*c*) the local limits of the jurisdiction of a Court appointed by a Local Government shall be such as may, from time to time, be fixed, with the previous sanction of the Governor General in Council, by that Local Government within the territories administered by it.

[11 & 12 Vic., c. 21, s. 3. 46 & 47 Vic., c. 52, s. 94(2).]

Jurisdiction to be exercised by a single Judge.

81. All matters in respect of which jurisdiction is given by this Act shall, where the Court consists of more Judges than one, be ordinarily transacted and disposed of by or under the direction of one of the Judges of that Court, and the Chief Justice or senior Judge shall, from time to time, assign a Judge for that purpose.

[46 & 47 Vic., c. 52, s. 97(2).]

Transfer of proceedings from Court to Court.

82. Any proceedings in bankruptcy pending in any Court appointed by the Local Government of a province under section 79 may, at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by the High Court of the province to itself or to any Court appointed as aforesaid in the province.

[46 & 47 Vic., c. 52, s. 97, (3).]

Power to state special case.

83. If any question of law arises in any bankruptcy proceeding in a Court appointed by the Local Government of a province under section 79, and all the parties to the proceeding desire, or one of them and the Judge of the Court desire, to have the question determined in the first instance in the High Court of the province, the Judge shall state the facts, in the form of a special case, for the opinion of that High Court. The special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

[46 & 47 c. 52, s.

Exercise of jurisdiction in chambers.

84. Subject to the provisions of this Act and to general rules, the Judge of a Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction.

[46 & 47 c. 52, s.

Delegation of powers to officers of Court and Presidency Judges of Small Causes.

85. *(1)* Subject to general rules limiting the powers conferred by this section, the High Court of Judicature at Fort William, Madras or Bombay may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, an officer of the Court or Judge of the Presidency Small Cause Court appointed by it in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such officer or Judge in the exercise of the said powers shall be deemed the order or act of the High Court.

(2) The powers referred to in sub-section *(1)* are the following, namely:—

(*a*) to hear bankruptcy petitions, and to make receiving orders and adjudications thereon;

(*b*) to hold the public examination of debtors;

(*c*) to grant orders of discharge;

(*d*) to approve compositions or schemes of arrangement;

(*e*) to make interim orders in any case of urgency;

(*f*) to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers;

(*g*) to hear and determine any unopposed or *ex parte* application;

(*h*) to summon and examine any person known or suspected to have in his possession effects of the debtor, or to be indebted to him, or to be capable of giving information respecting the debtor, his dealings or property.

[46 & 47 c. 52, s.

Powers of Court of Recorder of Rangoon and Court appointed by Local Government.

86. The Court of the Recorder of Rangoon, and any Court appointed by a Local Goverment under section 79, shall, for the purposes of its bankruptcy jurisdiction, in addition to its ordinary powers, have all the powers and jurisdiction possessed by any of the said High Courts of Judicature; and the orders of the Court may be enforced accordingly in manner prescribed.

[46 & 47 c. 52, s.

General powers of Bankruptcy Courts.

87. *(1)* Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case.

(2) A Court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

The Indian Bankruptcy Bill, 1886.

(Part VI.—Constitution, Procedure and Powers of Court.—Sections 88-95.)

(3) Where a receiving order has been made in any Court having jurisdiction in bankruptcy under this Act, and that Court consists of more Judges than one, the Judge by whom the order was made, or, where the order was made by an authority empowered in that behalf under section 85, the Judge assigned under section 81 for the transaction and disposal of matters in bankruptcy, shall have power, if he sees fit, without any further consent, to order the transfer to himself of any suit or other proceeding by or against the bankrupt pending before any other Judge or Judges of the Court.

(4) Where default is made by an assignee, debtor or other person in obeying any order or direction given by the Court or by an official assignee or any other officer of the Court under any power conferred by this Act, the Court may, on the application of the official assignee or other duly authorised person, or of its own motion, order the defaulting assignee, debtor or person to comply with the order or direction so given; and the Court may also, if it thinks fit, upon any such application make an immediate order for the committal of the defaulting assignee, debtor or other person:

Provided that the power given by this sub-section shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of the default.

Appeals.

Vic., 04.] Appeals in bankruptcy.

88. *(1)* Every Court having jurisdiction in bankruptcy under this Act may review, rescind or vary any order made by it under its bankruptcy jurisdiction.

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows:—

(a) an appeal from an order made by an officer of the Court or Judge of a Presidency Small Cause Court empowered under section 85 shall lie to the Judge assigned under section 81 for the transaction and disposal of matters in bankruptcy;

(b) an appeal from an original order made by a single Judge or Bench of a High Court consisting of more Judges than one shall, if appeals lie to the High Court from orders passed by a single Judge or Bench thereof in exercise of its original civil jurisdiction, lie to the High Court in accordance with the rules applicable to those appeals;

(c) an appeal from an order of the Court of the Recorder of Rangoon shall lie to the Special Court;

(d) an appeal from an order of a Court appointed by a Local Government under section 79, not being a High Court to which clause *(b)* of this sub-section applies, shall lie, if the Court is not a High Court, to the High Court of the province, and, if the Court is a High Court, as the Governor General in Council may from time to time direct;

(e) no appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure.

[46 & 47 Vic., c. 52, s. 105.] Discretionary powers of the Court.

89. *(1)* Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in Court under this Act shall be in the discretion of the Court.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it thinks fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it thinks fit to impose.

(4) Where by this Act or by general rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court thinks fit to impose.

(5) Subject to general rules, the Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories, or upon affidavit, or by commission beyond the limits of British India.

(6) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official assignee that it is expedient so to do, dispense with the public examination of one of the joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

[46 & 47 Vic., c. 52, s. 106.] Consolidation of petitions.

90. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings or any of them, on such terms as the Court thinks fit.

[46 & 47 Vic., c. 52, s. 107.] Power to change carriage of proceedings.

91. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor is indebted in the amount required by this Act in the case of the petitioning creditor, or may give the carriage of proceedings to the official assignee.

[46 & 47 Vic., c. 52, s. 108.] Continuance of proceedings on death of debtor.

92. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

[46 & 47 Vic., c. 52, s. 109.] Power to stay proceedings.

93. The Court may, at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court thinks just.

[46 & 47 Vic., c. 52, s. 110.] Power to present petition against one partner.

94. Any creditor whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

[46 & 47 Vic., c. 52, s. 111.] Power to dismiss petition against some respondents only.

95. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

The Indian Bankruptcy Bill, 1886.

(Part VII.—Small Bankruptcies.—Part VIII.—Fraudulent Debtors and Creditors. —Sections 96-102.)

[46 & 47 Vic., c. 52, s. 112.]

Property of partners to be vested in same assignee.

96. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and, if an assignee is acting in respect of the property of the first-mentioned member of the partnership, the same assignee shall, unless the Court otherwise directs, act in respect of the property of the last-mentioned member, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

[46 & 47 Vic., c. 52, s. 113.]

Suits by assignee and bankrupt's partners.

97. Where a member of a partnership is adjudged bankrupt, the Court may authorise the assignee to commence and prosecute any suit or other legal proceeding in the names of the assignee and of the bankrupt's partner; and any release by the partner of the debt or demand to which the proceeding relates shall be void; but notice of the application for authority to commence the proceeding shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the proceeding, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

[46 & 47 Vic., c. 52, s. 114.]

Suits on joint contracts.

98. Where a bankrupt is a contractor in respect of any contract jointly with any other person, that other person may sue or be sued in respect of the contract without the joinder of the bankrupt.

[46 & 47 Vic., c. 52, s. 115.]

Proceedings in partnership name.

99. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm; but in that case the Court may, on application by any person interested, order the names of the persons who are partners in the firm, or the name of the person carrying on business under a partnership name, to be disclosed in such manner, and verified on oath or otherwise, as the Court may direct.

Annulment of Adjudication.

[11 & 12 Vic., c. 21, ss. 8 & 9. 46 & 47 Vic., c. 52, s. 35.]

[New.]

Power for Court to annul adjudication in certain cases.

100. *(1)* Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, or where in some part of British India, or of Her Majesty's dominions elsewhere, beyond the limits within which the Court ordinarily exercises civil jurisdiction, proceedings are pending for the distribution of the estate and effects of the bankrupt among his creditors under this Act or under the Bankrupt or Insolvent Laws of that part of Her Majesty's dominions, and it appears to the Court that the distribution ought to take place in that part of British India or of Her Majesty's dominions elsewhere, the Court may, on the application of any person interested, by order, annul the adjudication.

[11 & 12 Vic., c. 21, ss. 7 & 11.]

(2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the assignee or other person acting under his authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or, in default of any such appointment, revert to the debtor for all his estate or interest therein, on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith published in the prescribed manner.

(4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs, and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

PART VII.

SMALL BANKRUPTCIES.

[46 & 47 Vic., c. 52, s. 116.]

Summary administration in small cases.

101. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official assignee reports to the Court, that the property of the debtor is not likely to exceed in value three thousand rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications, namely:—

(a) if the debtor is adjudged bankrupt, the official assignee shall be the assignee in the bankruptcy;

(b) no appeal shall lie from any order of the Court, except by order of the Court;

(c) the estate shall, where practicable, be distributed in a single dividend;

(d) such other modifications may be made in the provisions of this Act as may be prescribed with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor.

PART VIII.

FRAUDULENT DEBTORS AND CREDITORS.

Construction of this Part.

102. *(1)* "The Court" in this Part means the Court before which an accused person is tried and, with respect to matters which it is the duty of a jury to decide or determine, includes the jury where the trial of the accused is by jury.

(2) Nothing in this Part shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Part, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Part:

Provided that a person shall not be punished twice for the same offence.

The Indian Bankruptcy Bill, 1886.
(Part VIII.—Fraudulent Debtors and Creditors.—Sections 103-104.)

[32 Vic., c. 11. 46 & 47 Vic., c. 52, s. 103.] Punishment of fraudulent debtors.

103. Any person against whom a receiving order has been made under this Act shall, in each of the cases following, be punished with imprisonment which may extend to two years, or with fine, or with both; that is to say—

(a) if he does not, to the best of his knowledge and belief, fully and truly discover to the assignee administering his estate for the benefit of his creditors all his property, and how, and to whom, and for what consideration, and when, he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expenses of his family, unless the Court is satisfied that he had no intent to defraud:

(b) if he does not deliver up to that assignee, or as he directs, all such part of his property as is in his custody or under his control, and which he is required by law to deliver up, unless the Court is satisfied that he had no intent to defraud:

(c) if he does not deliver up to that assignee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless the Court is satisfied that he had no intent to defraud:

(d) if, after the presentation of a bankruptcy petition by or against him, or within four months next before the presentation thereof, he conceals any part of his property to the value of one hundred rupees or upwards, or conceals any debt due to or from him, unless the Court is satisfied that he had no intent to defraud:

(e) if, after the presentation of a bankruptcy petition by or against him, or within four months next before the presentation thereof, he fraudulently removes any part of his property of the value of one hundred rupees or upwards:

(f) if he makes any material omission in any statement relating to his affairs, unless the Court is satisfied that he had no intent to defraud:

(g) if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of one month to inform the assignee aforesaid thereof:

(h) if, after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(i) if, after the presentation of a bankruptcy petition by or against him, or within four months next before the presentation thereof, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(j) if, after the presentation of a bankruptcy petition by or against him, or within four months next before the presentation thereof, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(k) if, after the presentation of a bankruptcy petition by or against him, or within four months next before the presentation thereof, he fraudulently parts with, alters or makes any omission in, or is privy to the fraudulently parting with, altering or making any omission in, any document affecting or relating to his property or affairs:

(l) if, after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within four months next before the presentation thereof, he attempts to account for any part of his property by fictitious losses or expenses:

(m) if while undischarged he obtains credit to the extent of two hundred rupees or upwards from any person without informing that person that he is an undischarged bankrupt: [46 & 47 Vic., c. 52, s. 31.]

(n) if, within four months next before the presentation of a bankruptcy petition by or against him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same:

(o) if, within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, obtains, under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the Court is satisfied that he had no intent to defraud:

(p) if, within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, pawns, pledges or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the Court is satisfied that he had no intent to defraud:

(q) if he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

[32 & 33 Vic., c. 62, s. 12. 46 & 47 Vic., c. 52, s. 103.] Penalty for absconding with property.

104. If, after the presentation of a bankruptcy petition by or against him, or within four months next before the presentation thereof, any person against whom a receiving order is made under this Act quits British India and takes with him, or attempts or makes preparation to quit British India and to take with him, any part of his property to the amount of two hundred rupees or upwards, which ought by law to be divided amongst his creditors, he shall (unless the Court is satisfied that he had no intent

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(Part IX.—Supplemental Provisions.—Sections 105-112.)

to defraud) be punished with imprisonment which may extend to two years, or with fine, or with both.

[32 & 33 Vic., c. 62, s. 13.]

Penalty on fraudulently obtaining credit, &c.

105. Any person shall in each of the cases following be punished with imprisonment which may extend to one year, or with fine, or with both; that is to say—

(a) if in incurring any debt or liability he has obtained credit under false pretences or by means of any other fraud;

(b) if he has, with intent to defraud his creditors, or any of them, made, or caused to be made, any gift, delivery or transfer of or any charge on his property;

(c) if he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied decree or order for payment of money obtained against him.

[32 & 33 Vic., c. 62, s. 14.]

Penalty on false claim, &c.

106. If any creditor, in any bankruptcy composition or arrangement with creditors wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account which is untrue in any material particular, he shall be punished with imprisonment which may extend to one year, or with fine, or with both.

[32 & 33 Vic., c. 62, s. 15.]

Debts incurred by fraud.

107. Where a debtor makes any composition or arrangement with his creditors, he shall remain liable for the unpaid balance of any debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends.

[32 & 33 Vic., c. 62, s. 16. 46 & 47 Vic., c. 52, s. 164.]

Order by Court for prosecution on report of assignee.

108. Where the assignee reports to any Court exercising jurisdiction in bankruptcy that in his opinion a debtor against whom a receiving order has been made under this Act has been guilty of any offence under this Act, or under section 421, 422, 423 or 424 of the Indian Penal Code or any amendment thereof, or where any such Court is satisfied upon the representation of any creditor that there is ground to believe that the debtor has been guilty of any offence as aforesaid, that Court shall, if it appears to it that there is a reasonable probability that the debtor may be convicted, order the assignee to prosecute him for the offence.

XLV of 1860.

[46 & 47 Vic., c. 52, s. 167.]

Criminal liability after discharge or composition.

109. Where a debtor has been guilty of any offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved.

PART IX.

SUPPLEMENTAL PROVISIONS.

Application of Act.

[46 & 47 Vic., c. 52, s. 152. 45 & 46 Vic., c. 75, s. 1 (5). Act III of 1874, s. 8.]

Application to married women.

110. A married woman shall, in respect of her separate property (if any), be subject to this Act in the same way as if she were unmarried.

[46 & 47 c. 52, s.

Exclusion of corporations and companies.

111. A receiving order shall not be made against any corporation, or against any partnership, association or company registered under any enactment relating to companies for the time being in force.

[46 & 47 c. 52, s.

Administration in bankruptcy of estate of person dying insolvent.

112. *(1)* Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against the debtor, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor according to the law of bankruptcy.

(2) Upon the prescribed notice being given to the executor, administrator or other legal representative of the deceased debtor, the Court may in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss the petition with or without costs.

(3) An order of administration under this section shall not, in cases where a grant of probate or administration is required to establish a title as legal representative, be made until the expiration of two months from the date of the grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of bankruptcy within three months prior to his decease.

(4) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of Justice for the administration of the deceased debtor's estate; but that Court may, in that case, on the application of any creditor, and on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in bankruptcy; and thereupon the last-mentioned Court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5) Upon an order being made for the administration of a deceased debtor's estate under this section, the property of the debtor shall vest in the official assignee of the Court, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(6) With the modifications hereinafter mentioned, all the provisions of Part III of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7) In the administration of the property of the deceased debtor under an order of administration, the official assignee shall have regard to any claims by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate; and those claims shall be deemed a preferential debt under the order, and be

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payable in full, out of the debtor's estate, in priority to all other debts.

(8) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official assignee after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, the surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9) Notice to the legal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after the notice no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official assignee. Save as aforesaid nothing in this section shall invalidate any payment made or act or thing done in good faith by the legal representative before the date of the order for administration.

(10) Unless the context otherwise requires, "Court," in this section, means the Court exercising jurisdiction in bankruptcy within the local limits of the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease; and "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

(11) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules.

[46 & 47 Vic., c. 52, s. 168; 53 & 54 Vic., c. 63, s. 27.]

Power to make general rules.

113. *(1)* The High Court of a province may, from time to time, with the concurrence of the Governor General in Council, make, revoke and alter general rules for carrying into effect the objects of this Act.

(2) All general rules made under the foregoing provisions of this section shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) After the commencement of this Act no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Fees.

[46 & 47 Vic., c. 52, s. 169; 53 & 54 Vic., c. 63, s. 28.]

Fees.

114. The High Court of a province, with the previous sanction of the Governor General in Council, may from time to time make rules prescribing the fees and percentages to be charged for or in respect of proceedings under this Act, and the fees to be charged for or in respect of proceedings instituted under Chapter XX of the Code of Civil Procedure in any Court having jurisdiction under this Act, and may direct by whom and in what manner the same are to be collected and accounted for, and to what account they shall be paid.

Evidence.

[46 & 47 Vic., c. 52, s. 133.]

Gazettes to be evidence.

115. *(1)* A copy of the *Gazette of India*, or of the Gazette of a Local Government, containing any notice inserted therein in pursuance of this Act or the rules made under this Act, shall be evidence of the facts stated in the notice.

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive proof in all legal proceedings of the order having been duly made, and of its date.

[46 & 47 Vic., c. 52, s. 134.]

Evidence of proceedings at meetings of creditors.

116. *(1)* A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

[46 & 47 Vic., c. 52, s. 134.]

Evidence of proceedings in bankruptcy.

117. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy, any instrument, affidavit or document or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any Judge thereof, or is certified as a true copy by any Registrar thereof, be receivable in evidence in all legal proceedings whatever.

[11 & 12 Vic., c. 21, s. 86. 46 & 47 Vic., c. 52, s. 135.]

Swearing of affidavits.

118. Subject to general rules, any affidavit may be used in a Bankruptcy Court if it is sworn—

(1) in British India, before—

(a) any Court or Magistrate,

[Act XIV of 1882, s. 197.]

(b) any officer whom the High Court of a province may appoint in this behalf, or

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf;

(2) in England, before any person authorised to administer oaths in Her Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorised in writing in that behalf by the Judge of the Court;

(3) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and

(4) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid, by a British Minister or British Consul or British Political Agent or by a notary public).

[46 & 47 Vic., c. 52, s. 136.]

Death of witness.

119. In case of the death of the debtor, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the

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deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

[11 & 12 Vic., c. 21, s. 4. 46 & 47 Vic., c. 52, s. 137.]

Bankruptcy Courts to have seals.

120. Every Court having jurisdiction in bankruptcy under this Act shall have a seal describing the Court in such manner as may be directed by order of the High Court of the province, and judicial notice shall be taken in all legal proceedings of the seal, and of the signature of the Judge or Registrar of any Court having that jurisdiction.

[46 & 47 Vic., c. 52, s. 138.]

Certificate of appointment of assignee.

121. A certificate of the Court, that a person has been appointed or is an assignee under this Act, shall be conclusive proof of his having been appointed or being such assignee.

Time.

[46 & 47 Vic., c. 52, s. 141.]

Computation of time.

122. *(1)* Where by or under this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that limited time the same shall be taken as exclusive of the day of that date or of the happening of that event, and as commencing at the beginning of the next following day, and the act or proceeding shall be done or taken at latest on the last day of that limited time as so computed, unless the last day is a day on which the Court does not sit, in which case any act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court sits.

(2) Where by or under this Act any act or proceeding is directed to be done or taken on a certain day, then, if that day happens to be a day on which the Court does not sit, the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards on which the Court sits.

Notices.

[46 & 47 Vic., c. 52, s. 142.]

Service of notices.

123. All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith.

Formal Defects.

[46 & 47 Vic., c. 52, s. 143.]

Formal defect not to invalidate proceedings.

124. *(1)* No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity unless the Court before which an objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court.

(2) No defect or irregularity in the appointment of an assignee shall vitiate any act done by him in good faith.

Bankrupt Trustee.

XXVII of 1866. [46 & 47 Vic., c. 52, s. 147.]

Application of Trustee Act to bankruptcy of trustee.

125. Where a bankrupt is a trustee within the Indian Trustee Act, 1866, section 35 of that Act shall have effect so as to authorize the appointment of a new trustee in substitution for the bankrupt (whether voluntarily resigning or not), if it appears expedient to do so, and all provisions of that Act, and of any other Act relative thereto, shall have effect accordingly.

Corporations, Firms and Lunatics.

[46 & 47 c. 52, s.

Acting of corporations, firms and lunatics.

126. For all or any of the purposes of this Act, a corporation may act by any of its officers authorised in that behalf under the seal of the corporation; a firm may act by any of its members; and a lunatic may act by his committee, curator bonis or manager, or, when the matter is one in respect of which a Court of Wards has superintendence, by that Court or such person as it may appoint in this behalf.

Construction of former Acts, &c.

[46 & 47 c. 52, (2).]

Construction of enactments and instruments referring to 11 & 12 Vic., c. 21.

127. Whereby any enactment or instrument reference is made to the 11 & 12 Vic., cap. 21 (*an Act to consolidate and amend the Laws relating to Insolvent Debtors in India*), the enactment or instrument shall, so far as may be, be construed and have effect as if reference were made therein to the corresponding provisions of this Act.

[46 & 4 c. 52, s.

Certain provisions to bind the Crown.

128. The provisions of this Act relating to the remedies against the property of a debtor, the priorities of debts, the effect of a composition or scheme of arrangement, and the effect of a discharge shall bind the Crown.

[11 & 12 c. 21, 46 & 47 c. 52, s.

Saving for existing rights of audience.

129. Nothing in this Act, or in any transfer of jurisdiction effected thereby, shall take away or affect any right of audience that any person may have had immediately before the commencement of this Act; and all attorneys or other persons who had the right of audience before the Courts for the Relief of Insolvent Debtors shall have the like right of audience in bankruptcy matters in the High Courts of Judicature at Fort William, Madras and Bombay, respectively.

Unclaimed Funds or Dividends.

[46 & 4 c. 52, s.

Payment into Court of unclaimed or undistributed dividends or funds.

130. *(1)* Where an assignee under any bankruptcy, composition or scheme pursuant to this Act has under his control any unclaimed dividend which has remained unclaimed for more than six months, or where, after making a final dividend, he has in his hands or under his control any unclaimed or undistributed money arising from the property of the debtor, or where, after the passing of this Act, any unclaimed or undistributed fund or dividend in the hands or under the control of an assignee under the 11 & 12 Vic., c. 21 (*An Act to consolidate and amend the Laws relating to Insolvent Debtors in India*) has remained or remains unclaimed or undistributed for six months after the same became claimable or distributable, or in any other case for two years after the receipt thereof by the assignee, the assignee shall forthwith pay it into the Court for credit, if it is held for an estate, to the Bankruptcy Estates Account of that Court, or, if it is held as a dividend for a creditor, to the Bankruptcy Dividends Account of that Court.

(2) In the case of an assignee under the Statute aforesaid in the Court for the Relief of Insolvent Debtors at Calcutta, Madras or Bombay, or in the Court of the Recorder of Rangoon, "the Court" in sub-section *(1)* means the High Court of Judicature at Fort William, Madras or Bombay, or the Court of the Recorder of Rangoon, as the case may be.

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(Part IX.—Supplemental Provisions.—Sections 131-135.)

(3) The Court, with the concurrence of the Governor General in Council, may, from time to time, appoint a person to collect and get in all such unclaimed or undistributed moneys, funds or dividends; and for the purposes of this section the Court shall have, and at the instance of the person so appointed or of its own motion may exercise, all the powers conferred by this Act with respect to the discovery and realization of the property of a debtor, and the provisions of Part I of this Act with respect thereto shall, with any necessary modifications, apply to proceedings under this section.

(4) The provisions of this section shall not, except as expressly declared herein, deprive any person of any larger or other right or remedy to which he may be entitled against the assignee.

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Lapse and credit to Government of unclaimed or undistributed dividends.

131. Moneys transferred to the credit of the Bankruptcy Dividends Account which are not paid within six years from the date of their transfer to that account shall be carried to the account and credit of the Government of India, unless the Court, on the motion of a person interested, otherwise directs.

Vic., 162. of 63.]

Claims to moneys paid into Court or credited to Government under section 130 or section 131.

132. Any person claiming to be entitled to any moneys paid into the Bankruptcy Estates Account or the Bankruptcy Dividends Account pursuant to section 130, or carried to the account and credit of the Government of India pursuant to section 131, may apply to the Court for an order for payment to him of the same; and the Court, if satisfied that the person claiming is entitled, shall make an order for payment to him of the sum due:

Provided that, before making an order for the payment of a sum which has been carried to the account and credit of the Government of India, the Court shall cause a notice to be served on such officer as the Governor General in Council may appoint in this behalf, calling on the officer to show cause, within one month from the date of the service of the notice, why the order should not be made.

Distribution of certain unclaimed dividends received in respect of unproved claims under 11 & 12 Vic., c. 21.

133. *(1)* Where in the books of the official assignee of the Court for the Relief of Insolvent Debtors at Calcutta, Madras or Bombay, or of the Court of the Recorder of Rangoon, a dividend in respect of the claim of a person who has been named in a schedule as a creditor of an insolvent in proceedings under the 11 & 12 Vic., c. 21 *(An Act to consolidate and amend the Laws relating to Insolvent Debtors in India)*, but has not established his title to the dividend, has been standing to the credit of the estate of the insolvent for a longer period than six years from the date of the declaration of the dividend, the official assignee of the High Court of Judicature at Fort William, Madras or Bombay, or of the Court of the Recorder of Rangoon, as the case may be, shall, at the prescribed time and in the prescribed form, file an account of it in Court, and publish the account in two successive issues of the local official Gazette.

(2) If the dividend is not claimed within six months from the date of the second publication of the account in the Gazette, it shall, after deduction therefrom of the cost of preparing, filing and publishing the account, be divided rateably among the creditors of the estate who have proved their debts or demands.

Debtor's Books.

Access to debtor's books.

[Bankruptcy Rules, 1883, para. 259.]

134. *(1)* No person shall, as against the assignee, be entitled to withhold possession of the books of accounts belonging to the debtor or to set up any lien thereon.

[New.]

(2) Any creditor of the bankrupt may, subject to the control of the Court, inspect at all reasonable times, personally or by agent, any such books in the possession of the assignee.

Interpretation.

Interpretation.

[46 & 47 Vic. c. 52, s. 168.

135. *(1)* In this Act, unless the context otherwise requires,—

(1) "province" means the territories under the administration of a Local Government:

(2) "High Court of the province" and "High Court of a province" mean the highest Civil Court of appeal for a province:

(3) "the Court" (except in Part VIII) means the Court having jurisdiction in bankruptcy under this Act:

(4) "affidavit" includes declarations under any legislative enactment, affirmations, and attestations on honour:

(5) "assignee" means an official assignee or special assignee:

(6) "available act of bankruptcy" means any act of bankruptcy available for a bankruptcy petition at the date of the presentation of the petition on which the receiving order is made:

(7) "debt provable in bankruptcy" or "provable debt" includes any debt or liability by this Act made provable in bankruptcy:

(8) "general rules" includes forms:

(9) "Government treasury" includes a bank which conducts treasury business for the Government:

(10) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of any municipal or local fund:

(11) "oath" includes affirmation, declaration under any legislative enactment, and attestation on honour:

(12) "ordinary resolution" means a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution:

(13) "prescribed" means prescribed by general rules within the meaning of this Act:

(14) "property" includes money, goods, things in action, land and every other description of property, whether moveable or immoveable; also, obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, arising out of or incident to property as above defined:

(15) "schedule" means a schedule to this Act:

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(Part IX.—Supplemental Provisions.—Section 136.)
(The First Schedule.—Meetings of Creditors.)

(16) "secured creditor" means a person holding a mortgage, charge or lien on the property of the debtor, or any part thereof, as a security for a debt due to him from the debtor :

(17) "sheriff" includes any officer charged with the execution of a writ or other process :

(18) "special resolution" means a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution.

(2) The schedules to this Act shall be construed and have effect as part of the Act.

Repeal.

[46 & 47 Vic., c. 52, s. 169.]

Repeal of enactments.

136. *(1)* The enactments described in the third schedule are hereby repealed as from the commencement of this Act to the extent mentioned in that schedule.

(2) The repeal effected by this Act shall not affect—

(a) anything done or suffered before the commencement of this Act under any enactment repealed by this Act ; or

(b) any right or privilege acquired, or duty imposed, or liability or disqualification incurred, under any enactment so repealed ; or

(c) any fine, forfeiture or other punishment incurred or to be incurred in respect of any offence committed or to be committed against any enactment so repealed ; or

(d) the institution or continuance of any proceeding or other remedy, whether under any enactment so repealed or otherwise, for ascertaining any such liability or disqualification, or recovering or enforcing any such fine, forfeiture or punishment as aforesaid.

(3) Notwithstanding the repeal effected by this Act, all proceedings in any Court or before a Judge of any Court under any of the enactments repealed pending at the commencement of this Act shall, except so far as any provision of this Act expressly applies to pending proceedings, continue, and those enactments shall, except as aforesaid, apply thereto, as if this Act had not passed.

(4) The person for the time being holding the office of official assignee for any of the High Courts of Judicature at Fort William, Madras and Bombay, or for the Court of the Recorder of Rangoon, shall, for the purposes of any such proceedings pending before that Court or any Judge thereof, be deemed to have been appointed official assignee under the repealed enactment.

THE FIRST SCHEDULE.

[46 & 47 Vic., c. 52, Sch. I.]

(See section 17.)

MEETINGS OF CREDITORS.

1. The official assignee shall summon the meeting mentioned in section 17 by giving not less than seven days' notice of the time and place thereof in the prescribed manner.

2. The official assignee shall also, as soon as practicable, send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the meeting, accompanied by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the official assignee may think fit to make ; but the proceedings at the meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

3. The meeting shall be held at such place as is in the opinion of the official assignee most convenient for the majority of the creditors.

4. The official assignee or the special assignee may at any time summon a meeting of creditors, and shall do so whenever so directed by the Court, or so requested in writing by one-fourth in value of the creditors.

5. Meetings subsequent to the meeting mentioned in section 17 shall be summoned by sending notice of the time and place thereof to each creditor at the address given in his proof, or, if he has not proved, at the address given in the debtor's statement of affairs, or at such other address as may be known to the person summoning the meeting.

6. The official assignee, or some person nominated by him, shall be the chairman at every meeting : Provided that, if the Court so directs, the chairman at any meeting subsequent to the meeting mentioned in section 17 shall be such person as the meeting by ordinary resolution appoint.

7. A person shall not be entitled to vote as a creditor at any meeting of creditors unless he has duly proved a debt provable in bankruptcy to be due to him from the debtor, and the proof has been duly lodged before the time appointed for the meeting.

8. A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained.

9. For the purpose of voting a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt, he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence.

10. A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the debtor, and against whom a receiving order has not been made, as a security in his hands, and to estimate the value thereof and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

11. It shall be competent to the assignee, within twenty-eight days after a proof estimating the value of a security as aforesaid has been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value

so estimated, with an addition thereto of twenty per centum: Provided that, where a creditor has put a value on the security, he may at any time before he has been required to give up the security as aforesaid correct the valuation by a new proof, and deduct the new value from his debt, but in that case the addition of twenty per centum shall not be made if the assignee requires the security to be given up.

12. If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other partners of the firm, or any of them, may prove his debt for the purpose of voting at any meeting of creditors, and shall be entitled to vote thereat.

13. The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected, he shall mark the proof as objected to and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

14. A creditor may vote either in person or by proxy.

15. Every instrument of proxy shall be in the prescribed form, and shall be issued by the official assignee, or, if a special assignee has been appointed, by the special assignee, and every insertion therein shall be in the handwriting of the person giving the proxy.

16. A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In that case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

17. A creditor may give a special proxy to any person to vote at any specified meeting or adjournment thereof, for or against any specific resolution, or for or against any specified person as special assignee.

18. A proxy shall not be used unless it is deposited with the official assignee or special assignee before the meeting at which it is to be used.

19. Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a special assignee in obtaining proxies, or in procuring the special assigneeship, except by the direction of a meeting of creditors, the Court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf the solicitation has been exercised, notwithstanding any resolution of the creditors to the contrary.

20. A creditor may appoint the official assignee of the debtor's estate to act in manner prescribed as his general or special proxy.

21. The chairman of a meeting may, with the consent of the meeting, adjourn the meeting from time to time, and from place to place.

22. A meeting shall not be competent to act for any purpose, except the election of a chairman and the adjournment of the meeting, unless there are present, or represented thereat, at least three creditors, or all the creditors if their number does not exceed three.

23. If within half an hour from the time appointed for the meeting a quorum of creditors is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

24. The chairman of every meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him.

25. No person acting under either a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer in a position to receive any remuneration out of the estate of the debtor otherwise than as a creditor rateably with the other creditors of the debtor: Provided that where any person holds special proxies to vote for the appointment of himself as special assignee, he may use the said proxies and vote accordingly.

THE SECOND SCHEDULE.

(See section 32.)

[46 & 47 Vic., c. 52, Sch. II.]

PROOF OF DEBTS.

Proof in ordinary cases.

1. Every creditor shall prove his debt as soon as may be after the making of a receiving order.

2. A debt may be proved by delivering or sending through the post in a prepaid letter to the official assignee, or, if a special assignee has been appointed, to the special assignee, an affidavit verifying the debt.

3. The affidavit may be made by the creditor himself or by some person authorised by or on behalf of the creditor. If made by a person so authorised, it shall state his authority and means of knowledge.

4. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The official assignee or special assignee may at any time call for the production of the vouchers.

5. The affidavit shall state whether the creditor is or is not a secured creditor.

6. A creditor shall bear the cost of proving his debt, unless the Court otherwise specially orders.

7. Every creditor who has lodged a proof shall be entitled to see and examine the proofs of other creditors at all reasonable times.

8. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

Proof by Secured Creditors.

9. If a secured creditor realizes his security, he may prove for the balance due to him, after deducting the net amount realized.

10. If a secured creditor surrenders his security to the assignee for the general benefit of the creditors, he may prove for his whole debt.

11. If a secured creditor does not either realize or surrender his security, he shall, before ranking for dividend, state in his proof the particulars of his security, the date when it was given and the value at which he assesses it, and shall be entitled

The Indian Bankruptcy Bill, 1886.

(The Second Schedule.—Proof of Debts.)

to receive a dividend only in respect of the balance due to him after deducting the value so assessed.

12. (*a*) Where a security is so valued the assignee may at any time redeem it on payment to the creditor of the assessed value.

(*b*) If the assignee is dissatisfied with the value at which a security is assessed, he may require that the property comprised in any security so valued be offered for sale at such times and on such terms and conditions as may be agreed on between the creditor and the assignee, or as, in default of agreement, the Court may direct. If the sale is by public auction, the creditor, or the assignee on behalf of the estate, may bid or purchase.

(*c*) Provided that the creditor may at any time, by notice in writing, require the assignee to elect whether he will or will not exercise his power of redeeming the security or requiring it to be realized, and if the assignee does not, within six months after receiving the notice, signify in writing to the creditor his election to exercise the power, he shall not be entitled to exercise it; and the equity of redemption, or any other interest in the property comprised in the security which is vested in the assignee, shall vest in the creditor, and the amount of his debt shall be reduced by the amount at which the security has been valued.

13. Where a creditor has so valued his security, he may at any time amend the valuation and proof on showing to the satisfaction of the assignee, or the Court, that the valuation and proof were made *bonâ fide* on a mistaken estimate, or that the security has diminished or increased in value since its previous valuation; but every such amendment shall be made at the cost of the creditor, and upon such terms as the Court shall order, unless the assignee shall allow the amendment without application to the Court.

14. Where a valuation has been amended in accordance with the foregoing rule, the creditor shall forthwith repay any surplus dividend which he has received in excess of that to which he would have been entitled on the amended valuation, or, as the case may be, shall be entitled to be paid out of any money for the time being available for dividend any dividend or share of dividend which he has failed to receive by reason of the inaccuracy of the original valuation, before that money is made applicable to the payment of any future dividend, but he shall not be entitled to disturb the distribution of any dividend declared before the date of the amendment.

15. If a creditor after having valued his security subsequently realizes it, or if it is realized under the provisions of rule 12, the net amount realized shall be substituted for the amount of any valuation previously made by the creditor, and shall be treated in all respects as an amended valuation made by the creditor.

16. If a secured creditor does not comply with the foregoing rules, he shall be excluded from all share in any dividend.

17. Subject to the provisions of rule 12, a creditor shall in no case receive more than sixteen annas in the rupee and interest as provided by this Act.

Taking Accounts of Property mortgaged and Sale thereof.

18. Upon application by motion by any person claiming to be a mortgagee of any part of the bankrupt's immoveable property, whether the mortgage is of a legal or equitable nature, the Court shall proceed to inquire whether the person is such mortgagee, and for what consideration and under what circumstances; and if it is found that the person is such mortgagee, and if no sufficient objection appears to the title of the person to the sum claimed by him under the mortgage, the Court shall direct such accounts and inquiries to be taken as may be necessary for ascertaining the principal, interest and costs due upon the mortgage, and the rents and profits, or dividends, interest or other proceeds received by the person, or by any other person by his order or for his use in case he has been in possession of the property over which the mortgage extends, or any part thereof; and the Court, if satisfied that there ought to be a sale, shall direct notice to be given in such Gazettes or newspapers as it thinks fit, when and where, and by whom and in what way, the property, or the interest therein so mortgaged, is to be sold, and that the sale be made accordingly, and that the assignee (unless it be otherwise ordered) shall have the conduct of the sale; but it shall not be imperative on any such mortgagee to make such application. At any such sale the mortgagee may bid and purchase.

19. All proper parties shall join in the conveyance to the purchaser, as the Court may direct.

20. The moneys arising from the sale shall be applied in the first place in payment of the costs, charges and expenses of the assignee, of and occasioned by the application to the Court and of and attending the sale, and then in payment and satisfaction so far as the same will extend of what is found due to the mortgagee, for principal, interest and costs; and the surplus of the said moneys (if any) shall then be paid to the assignee. But in case the moneys arising from the sale are insufficient to pay and satisfy what is so found due to the mortgagee, then he shall be entitled to prove as a creditor for the deficiency, and receive dividends thereon rateably with the other creditors, but not so as to disturb any dividend then already declared.

21. For the better taking of such inquiries and accounts, and making a title to the purchaser, all parties may be examined by the Court upon interrogatories or otherwise as it may think fit, and shall produce before the Court upon oath all deeds, papers, books and writings in their respective custody or power relating to the estate or effects of the bankrupt, as the Court may direct.

Proof in respect of Distinct Contracts.

22. If a debtor was at the date of the receiving order liable in respect of distinct contracts as a member of two or more distinct firms, or as a sole contractor and also as member of a firm, the circumstance that the firms are in whole or in part composed of the same individuals, or that the sole contractor is also one of the joint contractors, shall not prevent proof in respect of the contracts against the properties respectively liable on the contracts.

Periodical Payments.

23. When any rent or other payment falls due at stated periods, and the receiving order is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of

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the order as if the rent or payment grew due from day to day.

Interest.

24. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the receiving order and provable in bankruptcy, the creditor may prove for interest at a rate not exceeding six per centum per annum to the date of the order from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and, if payable otherwise, then from the time when a demand in writing has been made giving the debtor notice that interest will be claimed from the date of the demand until the time of payment.

Debt payable at a future Time.

25. A creditor may prove for a debt not payable when the debtor committed an act of bankruptcy as if it were payable presently, and may receive dividends equally with the other creditors, deducting only thereout a rebate of interest at the rate of five per centum per annum computed from the declaration of a dividend to the time when the debt would have become payable according to the terms on which it was contracted.

Admission or Rejection of Proofs.

26. The assignee shall examine every proof and the grounds of the debt, and in writing admit or reject it in whole or in part, or require further evidence in support of it. If he rejects a proof, he shall state in writing to the creditor the grounds of the rejection.

27. If the assignee thinks that a proof has been improperly admitted, the Court may, on the application of the assignee, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

28. If a creditor is dissatisfied with the decision of the assignee in respect of a proof, the Court may, on the application of the creditor, reverse or vary the decision.

29. The Court may also expunge or reduce a proof upon the application of a creditor if the assignee declines to interfere in the matter, or, in the case of a composition or scheme, upon the application of the debtor.

30. For the purpose of any of his duties in relation to proofs, the assignee may administer oaths and take affidavits.

THE THIRD SCHEDULE.

(See section 136.)

ENACTMENTS REPEALED.

A.—Statute repealed.

Year and chapter.	Title.	Extent of repeal.
11 & 12 Vic., c. 21.	An Act to consolidate and amend the Laws relating to Insolvent Debtors in India.	So much as has not been repealed.

B.—Acts repealed.

Number and year.	Subject or title.	Extent of repeal.
XXVII of 1841.	An Act for appropriating the unclaimed Dividends on Insolvent Estates.	So much as has not been repealed.
XVII of 1875.	The Burma Courts Act, 1875.	Section 66.

STATEMENT OF OBJECTS AND REASONS.

THE matter of the general amendment of the law of bankruptcy and insolvency in India has been frequently of late years pressed upon the attention of the Government of India.

There are at present two main bodies of insolvency law in force in British India—first, the Statute 11 & 12 Vic., cap. 21; and secondly, Chapter XX of the Code of Civil Procedure (XIV of 1882). Roughly speaking, the former constitutes the insolvency law for the three Presidency-towns and for the towns of Rangoon, Moulmein, Akyab and Bassein; the latter the law for the country outside those towns. It is, however, to be observed that the High Courts administer the insolvency chapter of the Civil Procedure Code concurrently with their ordinary insolvency jurisdiction. Besides these two main bodies of law, there is a special insolvency law for the Punjab under Act IV of 1872, sections 22 to 33; and there are special Acts that have been passed for the relief of indebted landowners in different parts of the country.

2. In the year 1870 Sir James Stephen introduced a Bill repealing the Statute of 1848, and substituting for it an insolvency law applicable to the whole of British India. It was taken mainly from the English Bankruptcy Act of 1869. The general opinion about it was that its provisions were too complicated for the Mufassal, and that the system of voluntary management by creditors, which was then the principle of the English Act, was unsuitable to India, and the measure was accordingly dropped. The Bill was possibly open to the objection that it was beyond the competency of the Indian legislature, but this point does not appear to have been taken at the time.

3. Sir Arthur Hobhouse did not attempt to touch the insolvency law of the Presidency-towns, but he paid a good deal of attention to what he described as "those seldom-used sections" of the Code of Civil Procedure "which do duty for an insolvency law" in the Mufassal.* Speaking on the subject in 1875,† he remarked that the Code then contained the germ of an insolvency law, but nothing more than a germ. He believed that this part of the Code had been very little used, and he remarked that if this was so it was not surprising, as there was very small inducement to the debtor to avail himself of it. It seemed, however, he went on to say, to be the prevailing opinion that the judicial machinery in the Mufassal was hardly adapted to the working of any general and complete law of insolvency. At all events, he said, such a law should be treated as a separate measure, and not as part of the Code. It would probably, he added, be better for the present, and be likely to pave the way for some more complete measure in the future, if the legislature were to make the law a little less rudimentary than it then was, and at all events to supplement it where it seemed to be broken off in its natural course; and he embodied in Chapter XX of the Code of 1877 certain provisions framed in accordance with these views.

* Legislative Proceedings, 1876, page 241.
† Legislative Proceedings, 1875, page 76.

4. By Act XII of 1879 (now superseded by the Code of Civil Procedure of 1882) several amendments were made in the insolvency chapter of the Code. The most important of these was the extension of the chapter to persons against whose property orders of attachment had been issued in execution of money-decrees. In his speech on the passing of this Act, Mr. Whitley Stokes said that Chapter XX, even with all the improvements made by this Act, would still be incomplete; but that it went as far as most of the Committee with their present knowledge of the condition of the Mufassal Courts and the extent of India's indebtedness thought safe and wise. The Government of India in the Home Department, he said, either had issued, or was about to issue, a circular to the Local Governments, requesting their opinion as to the propriety of allowing debtors to a certain amount to apply for a declaration of insolvency, and if this were found possible the law would be altered accordingly.‡

‡ Abstract of Proceedings, 1879, page 202.

5. The circular referred to by Mr. Stokes was issued on the 22nd of September, 1879, and invited an expression of opinion on the suggestion that persons owing Rs. 200 and upwards should be allowed to apply to be adjudged insolvents, though they might not have been arrested or imprisoned, and though no order of attachment against their property had been made. The majority of the opinions received was adverse to the suggestion, and accordingly it was dropped.

6. In January, 1881, Mr. Pitt-Kennedy brought in a Bill for the amendment of the law relating to insolvent debtors in India. It was a short amending Bill of seven sections, and did not attempt to consolidate the law. Serious doubts were entertained whether some of the proposals of the Bill were not *ultra vires*, and it was therefore decided that the Bill should not be proceeded with. In the meantime, however, it had been circulated to Local Governments and Administrations for opinion: and among the comments and criticisms which were passed upon it the doubt is not unfrequently expressed whether it was worth while to pass a mere amending Bill, and whether it would not be possible to re-cast completely the insolvency law for India.

7. It is clear further that, apart from any question of general revision, there are certain points in which the existing law stands in somewhat urgent need of emendation.

Thus, the Secretary of State, in a despatch dated the 21st October, 1880, requested the early consideration by the Government of India, in communication with the several High Courts, of the question whether the Insolvency Courts could not under the existing law order the charge for advertising notices of insolvency in the provincial Gazettes and in the *London Gazette* to be defrayed from the estates concerned, and suggested that, if necessary, recourse should be had to legislation to ensure the recovery from every estate of all costs, whether incurred in England or in India, attendant on the insolvency. The Local Governments and High Courts were consulted on this question; and though the majority of them were of opinion that the point might be dealt with by an alteration of the statutory rules, yet the possibility of meeting the difficulty satisfactorily in this way does not appear to be altogether free from doubt.

8. Again, at Bombay, in consequence of the discovery some five or six years ago of serious defalcations on the part of the Official Assignee, it became necessary to re-organize the office of that functionary, and the High Court deemed it necessary—

(1) to provide that the accounts of the Official Assignee should be regularly audited by a competent auditor; and

(2) to appoint an Official Assignee of such position and character as might afford an effectual guarantee against misappropriation, and of such energy and legal knowledge as might ensure the most satisfactory and least expensive realization and distribution amongst creditors.

For these purposes additional funds were required, and the Court proposed to provide these funds mainly from unclaimed dividends. Accordingly, they framed certain new rules under the Insolvency Act of 1848, by which the unclaimed dividends were to be formed into a fund to be invested, with other money, in Government paper. The interest was to be

applied in paying an auditor, and in supplementing the remuneration of the Official Assignees. These rules have hitherto been acted on, but doubts have been suggested as to their validity, and the Bombay Government have been pressing the Government of India to introduce or sanction legislation for the purpose of validating them. It appears, however, to be doubtful whether they can be validated by anything short of Parliamentary legislation.

9. The insolvency law of the Presidency-towns is admittedly cumbrous, defective and out of date, and in some points of detail is, as has been shown, urgently in need of amendment. The proposals for its revision which have hitherto been submitted to the legislature have been objected to, not so much on the ground that they were undesirable, as on the ground that they were insufficient, and that, while it was desirable to re-cast the whole law and bring it into conformity with English law, it was expedient to postpone legislation for this purpose while proposals involving important amendments of the English law itself were under consideration. This objection has recently been removed by the passing of the English Bankruptcy Act of 1883. That Act may not be perfect; but at least it embodies the accumulated experience of the thirty-five years which elapsed since the passing of the Indian Insolvency Act; and in commercial law perfection of detail is less important than uniformity of principle. It is eminently desirable that the circumstances under which a debtor may be declared insolvent and under which he may obtain his discharge should be, as far as possible, the same in London and Calcutta.

10. The Government of India, therefore, after reference to the Secretary of State, came to the conclusion that the opportunity should be taken of repealing the Indian Insolvency Act and substituting a new Act conforming in general principles to the English Act of 1883, but adapted in details to Indian circumstances.

A Bill on these lines was prepared last year, and, having regard to the circumstance that an Indian Bankruptcy Act will have in some cases to be used by persons beyond the limits of British India, and to the advantage of having the decisions of the English Courts as a guide to its construction, it was thought well that its form and drafting should follow the English Act as closely as possible, except where there was some substantial reason for taking a different course. The result of the adoption of the English Act as a model then is that in some instances the phraseology of the present Bill, which is based on the draft of 1885, will be found to vary slightly from that ordinarily adopted in Acts of the Indian legislature, and in others it may be found to contain rules of interpretation and evidence, penal clauses and other provisions, which either cover ground already covered by parallel Indian enactments, or would be somewhat differently framed in a Bill intended only for this country.

11. The Bill which was prepared last year was submitted for opinion to the authorities most competent to advise on the subject of bankruptcy, and the further deviations from the scheme of the English Act which will be found in the present Bill are the outcome of the advice given by those authorities.

12. The first question which presents itself in connection with this measure is whether the new law should be applied to the whole of British India or only to specified towns.

There is something to be said in favour of having one, and only one, insolvency law for the whole of India. But, on the other hand, the difference between the circumstances of indebtedness in commercial seaports and in the interior appears to be such as to require, not indeed a different law, but different machinery. If Chapter XX of the Code of Civil Procedure were not in existence, it might be desirable to insert in a general Insolvency Act a chapter applying the law for the Presidency-towns, with modifications and simplifications, to the Mufassal Courts. But under existing circumstances it is thought that the best course is to keep Chapter XX standing, to amend it where necessary, and to apply it generally to parts of the country and to forms of indebtedness to which a law framed principally with a view to commercial insolvencies is not applicable, the new law being applied in the first instance only to the three Presidency-towns, and to Rangoon, Moulmein, Akyab and Bassein, and a power being taken to extend it to other commercial centres, such as Karáchi.

13. The Bill accordingly (section 79) constitutes by its direct operation only four Courts of Bankruptcy, namely, the High Courts of Judicature at Calcutta, Madras and Bombay and the Court of the Recorder of Rangoon, and confers upon the Local Governments power, with the previous sanction of the Governor General in Council, to constitute other Courts of Bankruptcy in the territories administered by them. The local limits of the jurisdiction of the Presidency High Courts when exercising bankruptcy jurisdiction are (section 80) defined to be the same as the local limits of their ordinary original civil jurisdiction, the local limits of the jurisdiction of the Recorder of Rangoon to comprise (as at present) the towns of Rangoon, Moulmein, Akyab and Bassein. The local limits of the Courts which may be constituted by Local Governments will be defined by those Governments with the previous sanction of the Governor General in Council.

14. The next question that presents itself is one as to the powers of the Governor General's Council. The present Indian insolvency law is contained in an Act of Parliament so framed as to operate throughout Her Majesty's dominions. Thus a vesting order made under it

vests in the assignee by its direct operation all the real and personal estate and effects of the insolvent in whatever part of those dominions they may be situated or accrue. An order of discharge made under it has direct effect in every part of those dominions. And the subordinate provisions of the Act are, speaking generally, framed on similar lines. The Act is one of those which it is within the competency of the Legislative Council of the Governor General to modify or repeal; but if we were to undertake without the aid of Parliament to repeal and re-cast it in the manner above indicated, we should, owing to the limitation of our legislative powers, produce an enactment which would fall short of the present law in the important matter of its local extent and operation. Nor could we attain our object by any amendment of the existing Act. To say nothing of the impracticability, from the draftman's point of view, of effecting, by way of amendment, the multitude of alterations which are needed in details and in matters of form, it must be remembered that it would be beyond the powers of the Council to extend in any way or substantially modify any of those provisions which apply beyond the limits of British India. And it is apprehended that, even if we were content to forego all notion of directly interfering with these provisions, any extensive amendment of the Act would probably affect them in such a way that either they would be held to have lost their operation beyond British India, or our enactment would be held to be *ultra vires* so far as it affected them, or else some other confusion or difficulty would arise.

15. It is an apprehension of some such result as this that has deterred the Government from attempting certain amendments of the Insolvency Act which have been from time to time suggested, and which in themselves would appear to be of a most trifling description. It is true that if the Council were to repeal the existing Act and substitute for it an Act of its own, drawn on improved lines, the new law, though treated as a foreign bankruptcy law, would receive a certain amount of recognition, and would be given effect to in many cases in the United Kingdom and in British Colonies; but it is apprehended that this result would, as a rule, be attainable only indirectly and through the medium of further judicial proceedings, that in some cases those proceedings would give rise to perplexing questions of private international law, and that in other cases again the Indian law would obtain but partial recognition. It is believed, for example, that a vesting order passed by our Courts under such a law would be allowed no effect as regards immoveable property situate in another British jurisdiction, and that the cases in which effect would be given to an order of discharge so passed are not as yet completely defined. Such difficulties could, no doubt, be met by supplementary bankruptcy proceedings concurrently instituted in the United Kingdom or the Colony, but it is obvious that the necessity for this should, if possible, be avoided. The Government of India has no information as to the proportion of the cases that now come before our Insolvency Courts in this country in which a limitation of the local operation of the law, like that just referred to, would be felt as a serious impediment; but it is apprehended that it would be so felt in the more important cases of bankrupts engaged in business transactions extending to the United Kingdom or the Colonies.

16. For these reasons it is necessary that any legislation undertaken here should be supported by an Act of Parliament. The precise form which the Act of Parliament should take is still under consideration in communication with the Secretary of State, but the Government of India as at present advised is disposed to think that the Act should be a confirming Act following legislation here rather than an enabling Act preceding it. An enabling Act followed by an Indian Act would give rise to questions as to whether the Indian legislature had exceeded the powers given to it by the English Act.

17. As regards the provisions of the Bill itself, it will be observed that the most striking difference between them and those of the English Act is that the duties discharged in England by the Board of Trade and committees of inspection are by the Bill entrusted to the Bankruptcy Court. This was unavoidable, as there is no authority in this country outside the Courts which could undertake the duties of the Board of Trade with any prospect of success, and the opinion is almost unanimous that the superintendence of bankruptcy proceedings by committees of inspection is unsuited to India.

18. Opinion is also adverse to the application to India of some of the provisions of the English Act respecting meetings of creditors. It is proposed therefore that meetings shall be held only when they are deemed by the assignee or the Court or one-fourth in value of the creditors to be necessary.

19. The other points in the Bill which appear to require explanation will be referred to as far as possible, in the order of the sections in which they occur.

20. The local extent of the Act (section 1) has been made as wide as the powers of the Indian legislature permit, and its operation can only be further extended by Parliament.

21. Several of the authorities who have recorded opinions on the draft of 1885, and among them a Committee of the Judges of the High Court at Fort William, have taken exception to the seizure and sale of the goods of a debtor under process of a Civil Court, and the failure of a debtor to comply with the requirements of a bankruptcy notice, being made acts of bankruptcy in India as they have been in England by section 4, sub-section (*1*), clauses (*e*) and (*g*), of the English Act. Those clauses therefore have been excluded from the Bill (section 2), but in their stead have been added clauses making it an act of bankruptcy for a debtor to offer

composition to his creditors (L. R. 13 Q. B. D. 471), or to be lying in prison for a longer period than twenty-one days for making default in payment of money (11 & 12 Vic., c. 21, ss. 8 and 9).

22. By section 4 the jurisdiction of the Court is limited to cases in which the debtor is in prison within the local limits of the jurisdiction under an order of a Civil Court for default in payment of money, or in which the debtor, or, if he is a member of a firm, his partner, has within a year before the presentation of the bankruptcy petition ordinarily resided or had a dwelling-house or place of business within those limits. This differs from the corresponding provisions of the English Act, which place no restriction of this kind on a petition by a debtor, and which admit a petition against a debtor when, and only when, he "is domiciled in England, or, within a year before the date of the presentation of the petition, has ordinarily resided or had a dwelling-house or place of business in England."

It differs also from the corresponding provisions of the Indian Insolvency Act, which proceed on the distinction, now to be abolished, between traders and others, and the effect of which in all particulars it would be hazardous to attempt to state.

23. As regards the difference between the English Act and the Bill in this respect, it seems clear that the fact of the debtor being in prison within the jurisdiction should, in this country, continue to be, as it is under the present Insolvency Act, a ground of jurisdiction; and it seems almost equally clear, having regard to the conditions under which the present legislation is undertaken and to the circumstance that the local limits of the jurisdiction of each Court, however they may be fixed, must embrace only a part of British India, that domicile should be rejected here as a ground of jurisdiction.

24. Comparing the Bill with the existing Indian insolvency law as construed by the High Courts, it will be observed that Bankruptcy Courts will, under the Bill, continue to have jurisdiction in cases where the bankrupt has a house of business within the local limits, as Pontifex, J., held them, in the cases of *Tariny Churn Guho* (I. B. L. R., App. 26) and *Howard Brothers* (I. B. L. R. 25 b), to have under the existing law, but that a High Court will not have bankruptcy jurisdiction in respect of an up-country debtor merely by reason of his being personally subject to the jurisdiction of that Court. It will be remembered that opposite views have been taken as to the existence of a jurisdiction on this latter ground under the existing law—see *re Tiethins*, I. B. L. R., O. C., 84, on the one hand, and *re Blackwell*, 9 Bo. H. C. Rep. 461, and *re Ricks*, 3 Mad. H. C. Rep. 151, on the other.

25. It has, however, been provided (section 4), on the recommendation of the Committee of the Judges of the High Court at Fort William, that a Court exercising jurisdiction in bankruptcy under the proposed Act may transfer to itself any proceedings under Chapter XX of the Code of Civil Procedure and deal with them under the Act. It has also been provided (section 4) that in any prescribed class of cases the Court may make a receiving order on a bankruptcy petition notwithstanding the restrictions generally confining its jurisdiction to cases arising within certain local limits. Section 9 provides that, where concurrent proceedings have been instituted under the Bankruptcy Act and under the Code, the Court may stay the proceedings under the Code wherever they may be pending.

26. On the recommendation of the Chief Judge of the Bombay Court of Small Causes it is proposed (section 7) that a Bankruptcy Court may refuse to make a receiving order on a debtor's petition if in its opinion the petition ought to have been presented before some other Bankruptcy Court.

27. A receiving order made under section 6 or section 7 of the Bill will not have precisely the same effect as a vesting order under section 7 of the present Insolvency Act. It will transfer the possession of, but not the property in, the debtor's estate. The debtor will not be divested of his estate until he has been adjudged bankrupt (section 20).

28. When the receiving order has been made, the debtor, if in prison, will be released (section 8), but he will be under the control of the official assignee (section 22), to whom the carriage of proceedings may be given if the petitioner does not proceed with due diligence (section 91).

29. Sections 13 and 100 of the Bill give a Bankruptcy Court power to rescind a receiving order or annul an adjudication of bankruptcy when it considers that the debtor's estate would be more conveniently administered in some other part of British India or of Her Majesty's dominions elsewhere. When an adjudication is annulled under the latter section, anything done under it remains valid, and the Court is empowered to direct that the debtor's property shall vest in any person it may appoint. It is conceived that if similarly wide powers are conferred on the English Bankruptcy Courts the provisions regarding concurrent bankruptcies contained in sections 77 *et seq.* of the present Indian Insolvency Act may be dispensed with.

30. Section 58 protects existing interests of official assignees, and while it is proposed (section 62), in accordance with ordinary Indian practice, to leave the remuneration of official assignees to be determined by executive order, it is improbable that the existing mode of remuneration will be altered during the incumbency of present office-holders.

31. It was urged, among other objections to Sir J. Stephen's Bill, that it would generally be difficult to find among the creditors in this country persons qualified and willing to take a large share in the administration of a bankrupt's estate, and as a matter of fact the official element has always been prominent in administrations under the existing law. It is accordingly proposed, on the practically unanimous advice of all authorities conversant with the practice of bankruptcy in this country, that the official assignee shall discharge the functions of trustee in bankruptcy except when the creditors express a wish for the appointment of a special assignee (section 77).

32. By section 24 of the Bill the provisions of section 23 of the English Bankruptcy Act, respecting the re-direction of debtors' letters, have, on the advice of the Bombay Chamber of Commerce, been extended to debtors' telegrams.

33. The saving of section 5 of the Statute commonly known as Bovill's Act (28 & 29 Vic., c. 86) in section 40 (6) of the English Bankruptcy Act has been omitted from section 33 of the Bill, as there is no corresponding enactment in the law of British India.

34. It has been suggested by the Bengal Chamber of Commerce and the Calcutta Trades Association that the clause (section 37) respecting reputed ownership should be so drawn as to meet the contention of the Official Assignee in the case of *Gubboy* v. *Miller* (I. L. R. 6 Cal. 633). This suggestion raises a very difficult question, which has been left unsolved by the English Bankruptcy Act of 1883. The opinions of the authorities in India who specially considered the question in 1881, with reference to Mr. Pitt-Kennedy's Bill, may be summed up in the following remarks of Mr. Justice Pontifex on section 23 of 11 & 12 Vic., c. 21 :—

"The fact is that the clause, though extremely valuable in particular cases, is one very dangerous to meddle with. As it stands, it is beneficial. To alter it as proposed would, in my opinion, be most mischievous. It is impossible with justice to make it apply to every case, and it would be hazardous to attempt to define with particularity to what cases it should apply. In my opinion it should be left as it now stands."

If further legislation is required, it must, in the opinion of the Government of India, take the form of a Bills of Sale Act.

35. Sections 45 and 46 of the English Bankruptcy Act, being framed with reference to English forms of execution, could not be adopted in the Bill without modification. It has been thought (sections 38 and 39 of the Bill) that the course most in harmony at the same time with those sections of the English Act and with the analogies presented by the Code of Civil Procedure would be to make the point of time at which the attaching creditor's title becomes complete against the assignee the same as that at which under section 295 of the Code it becomes complete against rival decree-holders. It is hoped that this will afford a simple and equitable settlement of a point regarding which there has been some difficulty in connection with the existing insolvency law.

36. On the suggestion of Mahárájá Sir Jotendro Mohun Tagore and Bábú Doorga Churn Law the provisions of section 45 of the Bill, with respect to the appropriation of pay or pension, have been made subject to the provisions of the Code of Civil Procedure and the Pensions Act, 1871.

37. The difference between section 48 (*1*) (*e*) of the Bill, defining the trustee's powers in respect of property to which the bankrupt is entitled "as tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple," and the corresponding provision of the English Bankruptcy Act is explained by the peculiar position in which the owners of such estates are placed by section 2 of Act XXXI of 1854. The simplicity of that position makes it possible to dispense with all the provisions of the Act for the abolition of fines and recoveries, which are incorporated by reference in the English Bankruptcy Act, with the exception of one, the substance of which, so far as it appears to be required, is embodied in sub-section (*2*) of section 48 of the Bill.

38. A Bankruptcy Court will have two entirely different kinds of money under its control, namely, (*a*) money held by it on account of estates before declaration of dividend, and (*b*) declared dividends awaiting distribution, the former being the property of estates and the latter the property of specific creditors. Section 64 recognises this distinction, and requires the Court to keep a Bankruptcy Estates Account and a Bankruptcy Dividends Account, the former being an account of money held for estates and the latter of money removed from that account on declaration of dividends and held for creditors till their dividends are paid to them or, through their default, lapse to the Government (section 131).

Both the Accounts are to be kept by the Court with a Government treasury. It is considered desirable that, like moneys received by ordinary Civil Courts, money received on account of bankruptcy estates should be paid into a Government treasury, in order that there may be the security of the Government for safe custody, and that the safeguards against the occurrence of error provided by the rules of the Government regarding payments from Government treasuries may be brought into operation. The expression "Government treasury" is so defined in section 135 as to include a Presidency Bank conducting treasury business for the Government.

39. Under the English Act of 1883, dividends on investments of money belonging to estates in bankruptcy are credited to the Government, and the Lord Chancellor is required to have regard to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings. It has been urged, and the Government of India is of opinion, that in this country, where bankruptcy proceedings are often necessarily more protracted than in England, interest on investments should be paid to creditors. But in that case each investment must be made and held separately for each estate, any portion of the funds of which is invested, and investments should only be made when the sum available for investment is large enough to make the interest sensible in amount. Section 66 provides for investments being made on these conditions at the instance of the Court out of funds standing to the credit of estates in the Bankruptcy Estates Account. It is only under that Account that delay prejudicial to creditors can arise. After money has been transferred to the Bankruptcy Dividends Account, any person to whom a dividend is due has only to present his receipt to obtain it, and he should have no inducement, whether by the money lying at interest or in any other way, to postpone for a day his taking the money out of the custody of the Court.

40. Section 79, sub-section *(1)*, clause *(e)*, of the Bill has been so drawn that jurisdiction in bankruptcy may be conferred in a limited class of cases on Courts beyond the Presidency-towns, as, for instance, on the High Court of Judicature for the North-Western Provinces or the Chief Court of the Punjab, with respect to proceedings under Chapter XX of the Code of Civil Procedure, where, by reason of the sum involved or the difficulty of winding up the estate under the Code, the Court may see fit to withdraw the proceedings from the Court in which they are pending and deal with them under proviso (*i*) to section 4, sub-section *(1)*.

41. Section 85 is based on the section of the English Act which permits the delegation of subordinate jurisdiction in certain matters to Registrars in bankruptcy. It seems that this jurisdiction may be most conveniently exercised by a Judge of the Small Cause Court in Madras and by officers of the High Court in Calcutta and Bombay.

42. Under section 88 of the Bill the appeal from a single Judge of a Presidency High Court and the Recorder of Rangoon exercising bankruptcy jurisdiction lies as at present. The appeal from any Mufassal Courts of Bankruptcy which may be established will in most cases lie to the High Court of the province.

43. Section 101 follows the English Act in fixing the limit for small bankruptcies at Rs. 3,000. But the opinion has been expressed by some of the authorities who have advised on the draft of last year that the limit should be raised to Rs. 5,000 or even to Rs. 10,000. The Government of India itself inclines to that opinion, but deems it advisable to adhere to the limit prescribed in the English Act until the matter can be further considered in the light of the criticisms on the present Bill.

44. Part VIII of the Bill is taken from the English Debtors' Act, 1869, as amended by the Bankruptcy Act, 1883. It embodies those full and strong powers for the arrest and punishment of fraudulent debtors and creditors which are the essential adjuncts of every proper law of bankruptcy. It is proposed, when a suitable occasion presents itself, to amend the Code of Criminal Procedure so as to give a Bankruptcy Court a power to commit offenders for trial similar to that which is conferred on the English Bankruptcy Courts by section 165 of the Act of 1883.

45. With respect to the suggestion that certain additional offences should be created by Part VIII of the Bill, it will be found that the Bill or the Indian Penal Code covers most, if not all, of the acts and omissions for which it has been proposed that further provision should be made.

46. Section 110 of the Bill provides that a married woman shall, in respect of her separate property (if any), be subject to the Act in the same way as if she were unmarried. The restriction in the corresponding provision, section 1 (5), of the English Married Women's Property Act, 1882, which confines it to the case of a woman carrying on a trade separately from her husband, has been omitted, because the vast majority of women to whom the Bill will be applicable stand either under sections 4 and 44 of the Indian Succession Act or under their personal laws on a footing altogether different from that of married women in England.

The phrase "separate property," it may be observed, is used in the wide sense in which it is used in the Indian Married Women's Property Act, 1874.

47. Section 130 provides, among other matters, for the payment into the Bankruptcy Courts of unclaimed dividends and other undistributed money remaining in the hands or under the control of assignees under the 11 & 12 Vic., c. 21, after the passing of the proposed Act.

The unclaimed dividends are of two classes, namely, dividends belonging to creditors who have proved their debts, and dividends reserved for creditors who have not done so.

With respect to dividends of the first class, they are, as the late Chief Justice of Bengal has said, the property of the creditors for whom they have been set apart, or of their representatives, just as much as money appropriated to a person interested in an administration-suit belongs to him or his representative.

The case of dividends of the second class is different, and it is proposed to provide for them by section 133 of the Bill. With respect to this class of dividends, Mr. Turner, the Official Assignee at Bombay, has observed as follows :—

"The other class of unclaimed dividends, which amounts probably to some two or more lakhs of rupees, has arisen in Bombay partly from there being no provision in the Act 11 & 12 Vic., c. 21, section 41 (similar to that in the present proposed Act, section 51), for the declaration of dividends only among creditors who "have proved their debts."* A practice therefore grew up in the office of the Official Assignee of declaring dividends calculated on the total amount entered in respect of claims, whether partially secured or not, and only adjusting the claims when creditors came to receive payment of the dividend declared. And it must be noticed that this practice had one great practical advantage, inasmuch as such partially secured creditors generally held goods on the way to Europe, and it could not be ascertained, till such goods were actually put on the European market, what the loss (if any) would be. And as creditors in their own interest as well as that of the estate would frequently hold such goods for a considerable time, it would have caused great delay in declaring dividends to wait until such creditors were in a position to adjust and prove their claims. But in many cases the result was that such creditors, when the account-sales were received, did not find it worth their while to prove their claims at all, and in such cases the dividend calculated on the whole original debt, as entered in the schedule, still remains unclaimed.

"Formerly, in the older estates, proceedings were taken under the old Act, XXVII of 1841, to strike such claims off the schedules, but of late years it has been considered that that process could not now be legally carried out."

* No unclaimed dividends of this class can arise under the proposed new Act (see section 55).

48. Section 134 is designed to meet the suggestion of the Acting Prothonotary and the Official Assignee of Bombay that the Act itself, and not the rules under it, should disallow claims to any lien on debtors' books, and the suggestion of the Bombay Chamber of Commerce that the Act should provide for the free access of creditors to those books.

49. Section 136 (3) of the Bill provides that notwithstanding the repeal of the existing law all proceedings pending under it at the time when the new Act comes into operation shall be disposed of as if that Act had not been passed. This is the course taken in respect of pending proceedings by the English Act, and, having regard to the extent of the change to be made in the law, it seems the only practicable course.

50. Rules 18 to 21 of the Second Schedule, regarding the taking of mortgagees' accounts and the sale of mortgaged property, have been inserted on the suggestion of Mr. Macgregor, the Official Assignee at Calcutta. These rules, which are frequently followed in this country, are substantially the same as those issued by Lord Loughborough in 1794, and the fact that they have been retained, with slight alterations, under the many Bankruptcy Acts passed in England since that date, is strong evidence of their utility.

51. It has been suggested that certain privileges should be accorded to the Official Assignee as a party to legal proceedings. But he will be a public officer within the meaning of section 2 of the Code of Civil Procedure, and, as such, entitled to the protection given to public officers by Chapter XXVII of that Code.

52. It has been objected that in certain circumstances the time limited by the draft of 1885 for doing some acts and things under the proposed Act would be found to be inconveniently short. In some cases the time has now been extended, and it is believed that section 89, sub-section (4), will enable the Courts to prevent hardship in the exceptional cases to which the time as now limited may prove inapplicable.

C. P. ILBERT.

The 14th May, 1886.

COLLECTION OF PAPERS REGARDING THE BANKRUPTCY BILL REFERRED TO IN THE STATEMENT OF OBJECTS AND REASONS.

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Extract, paragraphs 1 to 10, of Despatch from the Government of India to Her Majesty's Secretary of State for India,—(dated the 12th June, 1885).

WITH reference to Your Lordship's despatch No. 24 (Judicial), dated 14th of August last, we have the honour to submit herewith copies of a Bill (with the Objects and Reasons for the same) which has been prepared in our Legislative Department to adapt the English Bankruptcy Act, 1883, to Indian circumstances.

2. In exercise of the discretion left to us by paragraph 4 of Your Lordship's despatch, we have thought it well to make the measure applicable by its own vigour not only to the town of Rangoon but also to those of Bassein, Moulmein and Akyab, in which, as well as in Rangoon, the Presidency-town Insolvency Law has been for some years in force.

3. As regards the details of the measure, the material particulars in which it differs from the English Act are so fully explained in the Statement of Objects and Reasons that we deem it unnecessary to trouble Your Lordship with any further observations upon them.

4. As regards the form of the Parliamentary legislation required to give our Act operation in certain respects beyond the limits of British India, the proposal made in paragraph 27 of our despatch of the 5th May, 1884, was that we should pass our Act and that then an Act of Parliament should be passed extending such of its provisions as ought to apply beyond the limits of British India. On a further consideration of the point, however, we have come to the conclusion that the more convenient course—in fact, the only convenient course—would be that an Act of Parliament should be passed conferring upon the Governor General's Council the extended powers required for the object in view, and that our legislation should then proceed here in exercise of those powers. We are led to this conclusion chiefly by the consideration that, if the course we originally proposed were adopted, we should, on almost every occasion on which a necessity for amending our Act arose, find ourselves beset by difficulties of a nature similar to those which present themselves in connection with the amendment of the present Indian Insolvency Act,* and which are fully described in paragraph 25 of the despatch last referred to.

* 11 & 12 Vic., c. 21.

5. Assuming that Your Lordship will agree with us on this point, we have, as requested by Your Lordship, had prepared and forward herewith (annexed to the Objects and Reasons of the Bill) two drafts of enabling Acts of Parliament, either of which, we believe, would put the Governor General's Council in a position to deal with the subject in an adequate manner.

Of these we give the preference to that marked No. I, which, following more closely the precedents presented by section 288 of the Merchant Shipping Act, 1854,† and the Indian Marine Act, 1883,‡ confers the requisite powers in wider terms, and has further the merit of being the shorter of the two; but if the generality of its provisions should be deemed an objection, we should be prepared to accept an Act framed on the lines of the draft No. II. This latter attempts to specify with some particularity the several matters in respect of which extended powers are conferred on the Indian legislature; and though we have every hope that it would accomplish its purpose, we need hardly observe that a draft in this form cannot be so confidently relied on as one conceived in more general terms.

† 17 & 18 Vic., c. 104.

‡ 47 & 48 Vic., c. 38.

6. On collating either of these drafts with the draft Bill which we propose to introduce here, Your Lordship will perceive that while the Indian Bankruptcy Courts would be empowered through the medium of their adjudications, discharges, judgments, &c., to affect matters beyond the limits of British India, their direct action will, as explained in the Statement of Objects and Reasons, be strictly confined to this country.

To supply what might thus appear to be a defect in the system we rely on section 118 of the English Bankruptcy Act, 1883, which we assume will enable the Indian Bankruptcy Courts to invoke the aid of the English Bankruptcy Courts, and that not only by specific requisitions directed to a particular stage of a particular matter, but also in a more general form, as, for example, by requesting them to entertain all applications of a certain class which may be made to them on behalf of an Indian official receiver or trustee.

7. The local extent clause of the Bill to be introduced here is, as Your Lordship will observe, drawn on the assumption that the Parliamentary legislation will take the form indicated in the draft No. I. It would be altered in the opposite event.

8. In paragraph 27 of our despatch already referred to we said that we thought that the Bill to be submitted to Parliament should contain provisions relating to concurrent bankruptcies somewhat similar to those contained in sections 77 *et seq.* of the present Act (11 & 12 Vic., c. 21), and we should have no great objection to such provisions being inserted if Your Lordship should be advised that they are essential; but it seems to us on further consideration that it would be desirable to dispense, if possible, with so serious a complication, and we are inclined to think that the rare cases (none have been brought to our notice) in which bankruptcy proceedings are instituted simultaneously in a Court in England and in a Court in this country might be met by one Court surrendering the case to the other. The provisions of section 13 of our local Bill, giving power to annul a receiving order, and those of section 30, giving power to annul an adjudication, will, we conceive, confer upon the Courts in this country the powers requisite for this; but perhaps some extension of the corresponding powers conferred by the Bankruptcy Act, 1883, on the English Courts would be necessary.

9. The only further observation we have to make regarding the draft Acts of Parliament forwarded to Your Lordship is that both are restricted to what we consider necessary for our own purposes. If it is desired, for instance, that bankruptcy in this country should be a disqualification for offices in England, or if it is thought that the 13th and 30th sections of our local Bill, to which we have just referred, are not sufficient, but that it is necessary to confer on Courts of Bankruptcy in England a power of staying proceedings in the Bankruptcy

Courts of this country or removing a case pending here, the requisite provisions will doubtless be inserted in England.

10. We have circulated the draft Bill with a view to obtaining the opinion of the High Courts, commercial bodies and others, but we do not propose to take any step regarding it in the Legislative Council until we hear from Your Lordship in reply to this despatch. We desire to introduce the Bill at the opening of the next Calcutta session, and as we should before that time be in possession of the views of all those interested in, or qualified to form an opinion on, the measure, we might hope to pass it through all the stages at which discussions would be likely to arise before the return of the Government to Simla next year. If the requisite Parliamentary legislation should not be complete by that date, we should defer the final stage of our Bill.

* * * * *

Draft Bill referred to in paragraph 1 of Despatch to Her Majesty's Secretary of State, No 32, dated the 12th June, 1885.

DRAFT OF

A

BILL

TO

Amend and consolidate the Law of Bankruptcy and Insolvency in British India.

Preamble. WHEREAS it is expedient to amend and consolidate the law relating to bankruptcy and insolvency; It is hereby enacted as follows:—

Preliminary.

Short title and commencement. 1. (*1*) This Act may be cited as the Indian Bankruptcy Act, 1885.

(*2*) It shall, except as by this Act otherwise provided, come into force on such date as the Governor General in Council may, by notification in the official Gazette, fix in this behalf, which date is in this Act referred to as the commencement of this Act.

Local extent. 2. Except as otherwise expressly provided by this Act, the provisions of this Act shall have the same local extent as those of the Bankruptcy Act, 1883:

Provided that the following shall not extend to England, namely:—

Sections 39 and 40;
Section 44, sub-section (*2*);
Section 48;
Section 49, sub-section (*1*), clause (*e*), and sub-section (*2*);
Section 62, sub-section (*2*).

PART I.

PROCEEDINGS FROM ACT OF BANKRUPTCY TO DISCHARGE.

Acts of Bankruptcy.

Acts of bankruptcy. 3. (*1*) A debtor commits an act of bankruptcy in each of the following cases:—

(*a*) if in British India or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally;

(*b*) if in British India or elsewhere he makes a fraudulent conveyance, gift, delivery or transfer of his property, or of any part thereof;

(*c*) if in British India or elsewhere he makes any conveyance or transfer of his property or any part thereof, or creates any charge thereon which would, under this or any other enactment for the time being in force, be void as a fraudulent preference if he were adjudged bankrupt;

(*d*) if with intent to defeat or delay his creditors he does any of the following things, namely, departs out of British India, or being out of British India remains out of British India or departs from his dwelling-house, or otherwise absents himself, or begins to keep house;

(*e*) if execution issued against him has been levied by sale of his property in any civil proceeding in British India;

(*f*) if he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself;

(*g*) if a creditor has obtained in British India a decree against him for any amount, and, execution thereof not having been stayed, has served on him in British India, or, by leave of the Court, elsewhere, a bankruptcy notice under this Act, requiring him to pay the judgment-debt in accordance with the terms of the decree, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within *fifteen* days after service of the notice in case the service is effected in British India, and in case the service is effected elsewhere then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice, or satisfy the Court that he has a counter-claim, set-off or cross demand which equals or exceeds the amount of the decree and which he could not set up in the suit in which the decree was obtained;

(*h*) if the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

(*2*) A bankruptcy notice under this Act shall be in the prescribed form, and shall state the consequences of non-compliance therewith, and shall be served in the prescribed manner.

Receiving Order.

Jurisdiction to make receiving order. 4. Subject to the conditions hereinafter specified, if a debtor commits an act of bankruptcy, the Court may, on a bankruptcy petition being presented either by a creditor or by the debtor, make an order, in this Act called a receiving order, for the protection of the estate [46 & 47 Vic., c. 52, s. 5.]

Conditions on which creditor may petition. 5. (*1*) A creditor shall not be entitled to present a bankruptcy petition against a debtor unless— [11 & 12 Vic., c. 21, ss. 8 & 9. 46 & 47 Vic., c. 52, s. 6.]

(*a*) the debt owing by the debtor to the petitioning creditor, or, if two or more creditors join in the petition, the aggregate amount of debts owing to the several petitioning creditors, amounts to five hundred rupees; and

(*b*) the debt is a liquidated sum, payable either immediately or at some certain future time; and [11 & 12 Vic., c. 21, s. 10.]

(*c*) the act of bankruptcy on which the petition is grounded has occurred within three months before the presentation of the petition; and

(*d*) the debtor is in prison within the local limits of the jurisdiction of the Court under an order of a Civil Court for non-payment of money, or has within a year before the date of the presentation of the petition ordinarily resided or had a dwelling-house or place of business within those limits.

(*2*) If the petitioning creditor is a secured creditor, he must in his petition either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him, after deducting the value so estimated in the same manner as if he were an unsecured creditor.

Proceedings and order on creditor's petition. 6. (*1*) A creditor's petition shall be verified by affidavit of the creditor, or of some person on his behalf having knowledge of the facts, and served in the prescribed manner, [46 & 47 Vic., c. 52, s. 7.]

(*2*) At the hearing the Court shall require proof of the debt of the petitioning creditor, of the service of the petition, and of the act of bankruptcy, or, if more than one act of bankruptcy is alleged in the petition, of some one of the alleged acts of bankruptcy, and if satisfied with the proof may make a receiving order in pursuance of the petition.

(*3*) If the Court is not satisfied with the proof of the petitioning creditor's debt, or of the act of bankruptcy, or of the service of the petition, or is satisfied by the debtor that he is able to pay his debts or that for other sufficient cause no order ought to be made, the Court may dismiss the petition.

(*4*) When the act of bankruptcy relied on is non-compliance with a bankruptcy notice to pay, secure or compound for a judgment-debt, the Court may, if it thinks fit, stay or dismiss the petition on the ground that an appeal is pending from the decree.

(*5*) Where the debtor appears on the petition, and denies that he is indebted to the petitioner, or that he is indebted to such an amount as would justify the petitioner in presenting a petition against him, the Court, on such security (if any) being given as the Court may require for payment to the petitioner of any debt which may be established against him in due course of law, and of the costs of establishing the debt, may, instead of dismissing the petition, stay all proceedings on the petition for such time as may be required for trial of the question relating to the debt.

The Indian Bankruptcy Bill, 1885.

(Part I.—Proceedings from Act of Bankruptcy to Discharge.—Sections 7-17.)

(6) Where proceedings are stayed, the Court may, if by reason of the delay caused by the stay of proceedings or for any other cause it thinks just, make a receiving order on the petition of some other creditor, and shall thereupon dismiss, on such terms as it thinks just, the petition in which proceedings have been stayed as aforesaid.

(7) A creditor's petition shall not, after presentment, be withdrawn without the leave of the Court.

[11 & 12 Vic., c. 21, s. 5. 40 & 47 Vic., c. 52, s. 8.]

Debtor's petition and order thereon.

7. *(1)* A debtor shall not be entitled to present a bankruptcy petition against himself unless he is in prison within the local limits of the jurisdiction of the Court under an order of a Civil Court for non-payment of money, or has within a year before the date of the presentation of the petition ordinarily resided or had a dwelling-house or place of business within those limits.

(2) A debtor's petition shall allege that the debtor is unable to pay his debts, and the presentation thereof shall be deemed an act of bankruptcy without the previous filing by the debtor of any declaration of inability to pay his debts; and, if the debtor proves that he is entitled to present the petition, the Court shall thereupon make a receiving order.

(3) A debtor's petition shall not, after presentment, be withdrawn without the leave of the Court.

[11 & 12 Vic., c. 21, ss. 13 & 19. 40 & 47 Vic., c. 52, s. 9.]

Effect of receiving order.

8. *(1)* On the making of a receiving order the official receiver shall be thereby constituted receiver of the property of the debtor, and thereafter, except as directed by this Act, no creditor to whom the debtor is indebted in respect of any debt provable in bankruptcy shall have any remedy against the property or person of the debtor in respect of the debt, or shall commence any suit, action or other legal proceedings unless with the leave of the Court and on such terms as the Court may impose.

(2) But this section shall not affect the power of any secured creditor to realize or otherwise deal with his security in the same manner as he would have been entitled to realize or deal with it if this section had not been passed.

[11 & 12 Vic., c. 21, s. 49. 40 & 47 Vic., c. 52, s. 10.]

Discretionary powers as to appointment of receiver and stay of proceedings.

9. *(1)* The Court may, if it is shown to be necessary for the protection of the estate, at any time after the presentation of a bankruptcy petition and before a receiving order is made, appoint the official receiver to be interim receiver of the property of the debtor, or of any part thereof, and direct him to take immediate possession thereof or of any part thereof.

(2) The Court may at any time after the presentation of a bankruptcy petition stay any suit, action, execution or other legal process pending in any Court in British India against the property or person of the debtor, and any Court in which proceedings are pending against a debtor may, on proof that a bankruptcy petition has been presented by or against the debtor, either stay the proceedings or allow them to continue on such terms as it may think just.

[40 & 47 Vic., c. 52, s. 11.]

Service of order staying proceedings.

10. When the Court makes an order staying any suit, action or proceeding or staying proceedings generally, the order may be served by sending a copy thereof, under the seal of the Court, by prepaid post letter to the Court before which the proceeding is pending.

[40 & 47 Vic., c. 52, s. 12.]

Power to appoint special manager.

11. *(1)* The official receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business or the interests of the creditors generally require the appointment of a special manager of the estate or business other than the official receiver, appoint a manager thereof accordingly to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the official receiver.

(2) The special manager shall give security and account in such manner as the Court may direct.

(3) The special manager shall receive such remuneration as the creditors may by resolution at an ordinary meeting determine, or, in default of any such resolution, as may be prescribed.

[40 & 47 Vic., c. 52, s. 13.]

Advertisement of receiving order.

12. Notice of every receiving order, stating the name, address and description of the debtor, the date of the order, the Court by which the order is made and the date of the petition, shall be published in the prescribed manner.

[40 & 47 Vic., c. 52, s. 14.]

Power to Court to annul receiving order in certain cases.

13. If in any case where a receiving order has been made on a bankruptcy petition it appears to the Court by which the order was made upon an application by the official receiver, or any creditor or other person interested, that a majority of the creditors in number and value are resident in the United Kingdom or in any other part of Her Majesty's dominions beyond the limits of British India, or that from the situation of the property of the debtor, or other cause, his estate and effects ought to be distributed among the creditors under the Bankrupt or Insolvent Laws of that part of Her Majesty's dominions, the said Court, after such enquiry as to it may seem fit, may rescind the receiving order and stay all proceedings on, or dismiss, the petition upon such terms, if any, as the Court may think fit.

Proceedings consequent on Order.

First and other meetings of creditors.

14. *(1)* As soon as may be after the making of a receiving order against a debtor, a general meeting of his creditors (in this Act referred to as the first meeting of creditors) shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and generally as to the mode of dealing with the debtor's property.

(2) With respect to the summoning of and proceedings at the first and other meetings of creditors, the rules in the first schedule shall be observed.

Debtor's statement of affairs.

15. *(1)* Where a receiving order is made against a debtor, he shall make out and submit to the official receiver a statement of and in relation to his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts and liabilities, the names, residences and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the official receiver may require.

(2) The statement shall be so submitted within the following times, namely:—

(i) if the order is made on the petition of the debtor, within three days from the date of the order;

(ii) if the order is made on the petition of a creditor, within seven days from the date of the order.

But the Court may, in either case, for special reasons, extend the time.

(3) If the debtor fails without reasonable excuse to comply with the requirements of this section, the Court may, on the application of the official receiver, or of any creditor, adjudge him bankrupt.

(4) Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect this statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor shall be punished, on the complaint of the trustee or official receiver, with imprisonment which may extend to three months, or with fine, or with both.

Public Examination of Debtor.

Public examination of debtor.

16. *(1)* Where the Court makes a receiving order it shall hold a public sitting, on a day to be appointed by the Court for the examination of the debtor, and the debtor shall attend thereat, and shall be examined as to his conduct, dealings and property.

(2) The examination shall be held as soon as conveniently may be after the expiration of the time for the submission of the debtor's statement of affairs.

(3) The Court may adjourn the examination from time to time.

(4) Any creditor who has tendered a proof, or his representative authorised in writing, may question the debtor concerning his affairs and the causes of his failure.

(5) The official receiver, and a trustee if he is appointed before the conclusion of the examination, may take part therein.

(6) The Court may put such questions to the debtor as it may think expedient.

(7) The debtor shall be examined upon oath, and it shall be his duty to answer all such questions as the Court may put or allow to be put to him.

(8) Such notes of the examination as the Court thinks proper shall be taken down in writing, and shall be read over to and signed by the debtor, and may thereafter be used in evidence against him; they shall also be open to the inspection of any creditor at all reasonable times.

(9) When the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it shall, by order, declare that his examination is concluded, but such order shall not be made until after the day appointed for the first meeting of creditors.

Composition or Scheme of Arrangement.

Power for creditors to accept and Court to approve composition or arrangement.

17. *(1)* The creditors may at the first meeting or any adjournment thereof, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them from the debtor,

The Indian Bankruptcy Bill, 1885.

(Part I.—Proceedings from Act of Bankruptcy to Discharge.—Section 18-20.)

or a proposal for a scheme of arrangement of the debtor's affairs.

(2) The composition or scheme shall not be binding on the creditors unless it is confirmed by a resolution passed (by a majority in number representing three-fourths in value of all the creditors who have proved) at a subsequent meeting of the creditors, and is approved by the Court.

Any creditor who has proved his debt may assent to or dissent from the composition or scheme by a letter addressed to the official receiver in the prescribed form, and attested by a witness, so as to be received by the official receiver not later than the day preceding the said subsequent meeting, and any such creditor shall be taken as being present and voting at the meeting.

(3) The subsequent meeting shall be summoned by the official receiver by not less than seven days' notice, and shall not be held until after the public examination of the debtor is concluded. The notice shall state generally the terms of the proposal, and shall be accompanied by a report of the official receiver thereon.

(4) The debtor or the official receiver may, after the composition or scheme is accepted by the creditors, apply to the Court to approve it, and notice of the time appointed for hearing the application shall be given to each creditor who has proved.

(5) The Court shall, before approving a composition or scheme, hear a report of the official receiver as to the terms of the composition or scheme and as to the conduct of the debtor, and any objections which may be made by or on behalf of any creditor.

(6) If the Court is of opinion that the terms of the composition or scheme are not reasonable, or are not calculated to benefit the general body of creditors, or in any case in which the Court is required under this Act where the debtor is adjudged bankrupt to refuse his discharge, the Court shall, or if any such facts are proved as would under this Act justify the Court in refusing, qualifying or suspending the debtor's discharge, the Court may, in its discretion, refuse to approve the composition or scheme.

(7) If the Court approves the composition or scheme, the approval may be testified by the seal of the Court being attached to the instrument containing the terms of the composition or scheme, or by the terms being embodied in an order of the Court.

(8) A composition or scheme accepted and approved in pursuance of this section shall be binding on all the creditors so far as relates to any debts due to them from the debtor and provable in bankruptcy.

(9) A certificate of the official receiver that a composition or scheme has been duly accepted and approved shall, in the absence of fraud, be conclusive as to its validity.

(10) The provisions of a composition or scheme under this section may be enforced by the Court in British India on application by any person interested, and an order of the Court made on the application may be executed as if it were a decree.

(11) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court, on satisfactory evidence, that the composition or scheme cannot in consequence of legal difficulties, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, or that the approval of the Court was obtained by fraud, the Court may, if it thinks fit, on application by any creditor, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made, or thing duly done under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, any debt provable in other respects, which has been contracted before the date of the adjudication, shall be provable in the bankruptcy.

(12) If, under or in pursuance of a composition or scheme, a trustee is appointed to administer the debtor's property or manage his business, Part V of this Act shall apply to the trustee as if he were a trustee in a bankruptcy, and as if the terms "bankruptcy," "bankrupt" and "order of adjudication" included respectively a composition or scheme of arrangement, a compounding or arranging debtor and order approving the composition or scheme.

(13) Part III of this Act shall, so far as the nature of the case and the terms of the composition or scheme admit, apply thereto, the same interpretation being giving to the words "trustee," "bankruptcy," "bankrupt" and "order of adjudication" as in the last preceding sub-section.

(14) No composition or scheme shall be approved by the Court which does not provide for the payment in priority to other debts of all debts directed to be so paid in the distribution of the property of a bankrupt.

(15) The acceptance by a creditor of a composition or scheme shall not release any person who under this Act would not be released by an order of discharge if the debtor had been adjudged bankrupt.

18. Notwithstanding the acceptance and approval of a composition or scheme, such composition or scheme shall not be binding on any creditor so far as regards a debt or liability from which, under the provisions of this Act, the debtor would not be discharged by an order of discharge in bankruptcy, unless the creditor assents to the composition or scheme.

Effect of composition or scheme. [40 & 47 Vic., c. 53, s. 19.]

Adjudication of Bankruptcy.

19. *(1)* At the time of making a receiving order or at any time thereafter, the Court may, on the application of the debtor himself, adjudge him bankrupt. The application may be made orally and without notice.

Adjudication of bankruptcy. [Bankruptcy Rules, 1886, para. 155.]

(2) Where a receiving order is made against a debtor, then, if the creditors at the first meeting or any adjournment thereof by ordinary resolution resolve that the debtor be adjudged bankrupt, or pass no resolution, or if the creditors do not meet, or if a composition or scheme is not accepted or approved in pursuance of this Act within fourteen days after the conclusion of the examination of the debtor or such further time as the Court may allow, the Court shall adjudge the debtor bankrupt. [46 & 47 Vic., c. 52, s. 20.]

(3) When a receiving order is made and no creditors attend at the time and place appointed for the first meeting or one adjournment thereof, or if sufficient creditors do not attend then to pass a special resolution, or when the official receiver satisfies the Court that the debtor has absconded or that the debtor does not intend to propose a composition or scheme, the Court may, either on the application of a creditor or of the official receiver, forthwith adjudge the debtor bankrupt. [Bankruptcy Rules, 1886, para. 156.]

(4) When a debtor is adjudged bankrupt his property shall become divisible among his creditors and shall vest in a trustee. [11 & 12 Vic., c. 21, ss. 7 & 11.]

(5) Notice of every order adjudging a debtor bankrupt, stating the name, address and description of the bankrupt, the date of the adjudication and the Court by which the adjudication is made, shall be published in the prescribed manner, and the date of the order shall, for the purposes of this Act, be the date of the adjudication. [11 & 12 Vic., c. 21, s. 35.]

20. *(1)* The official receiver shall be the trustee of the property of the bankrupt unless some other person is appointed trustee under the provisions next hereinafter contained.

Appointment of trustee. [11 & 12 Vic., c. 21, ss. 15 & 17 46 & 47 Vic., c. 52, s. 21.]

(2) Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, and the Court having regard to the value of the property or for any other reason declares that the appointment of a person other than the official receiver as trustee is desirable, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt; or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned.

(3) The person so appointed shall give security in manner prescribed to the satisfaction of the Court, and the Court, if satisfied with the security, shall certify that his appointment has been duly made, unless it disapproves of the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate or any particular creditor makes it difficult for him to act with impartiality in the interests of the creditors generaly.

(4) The appointment of a trustee shall take effect as from the date of the certificate.

(5) If a declaration is made by the Court under sub-section *(2)* and a trustee is not appointed by the creditors within four weeks from the date of the declaration, or, if the declaration precedes the adjudication, from the date of the adjudication, or, in the event of negotiations for a composition or scheme being pending at the expiration of those four weeks, then within seven days from the close of those negotiations by the refusal of the creditors to accept, or of the Court to approve, the composition or scheme, the official receiver shall report the matter to the Court; and thereupon the Court may, if it thinks fit, appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment if made.

(6) Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may, at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified the person appointed shall become trustee in the place of the person appointed by the Court.

The Indian Bankruptcy Bill, 1885.

(Part I.—Proceedings from Act of Bankruptcy to Discharge.—Sections 21-26.)

(7) When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the official receiver shall, if a declaration has been made by the Court under sub-section *(2)*, forthwith summon a meeting of creditors for the purpose of appointing a trustee.

[46 & 47 Vic., c. 52, s. 22.]

Committee of inspection.

21. *(1)* In any case in which a declaration is made under section 20, sub-section *(2)*, and with the permission of the Court in any other case, the creditors qualified to vote may at their first or any subsequent meeting, by resolution, appoint from among the creditors qualified to vote, or the holders of general proxies or general powers-of-attorney from such creditors, a committee of inspection for the purpose of superintending the administration of the bankrupt's property by the trustee. The committee of inspection shall consist of not more than five nor less than three persons.

(2) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the trustee.

(5) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee, his office shall thereupon become vacant.

(6) Any member of the committee may be removed by an ordinary resolution at any meeting of creditors, of which seven days' notice has been given, stating the object of the meeting.

(7) On a vacancy occurring in the office of a member of the committee, the trustee shall forthwith summon a meeting of creditors for the purpose of filling the vacancy, and the meeting may, by resolution, appoint another creditor or other person eligible as above to fill the vacancy.

(8) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body; and where the number of members of the committee of inspection is for the time being less than five, the creditors may increase that number so that it do not exceed five.

(9) If there is no committee of inspection, any act or thing or any direction or permission by this Act authorized or required to be done or given by the committee may be done or given by the Court on the application of the trustee.

[46 & 47 Vic., c. 52, s. 23.]

Power to accept composition or scheme after bankruptcy adjudication.

22. *(1)* Where a debtor is adjudged bankrupt the creditors may, if they think fit, at any time after the adjudication, by special resolution, resolve to entertain a proposal for a composition in satisfaction of the debts due to them under the bankruptcy, or for a scheme of arrangement of the bankrupt's affairs; and thereupon the same proceedings shall be taken and the same consequences shall ensue as in the case of a composition or scheme accepted before adjudication.

(2) If the Court approves the composition or scheme, it may make an order annulling the bankruptcy and vesting the property of the bankrupt in him or in such other person as the Court may appoint, on such terms, and subject to such conditions, if any, as the Court may declare.

(3) If default is made in payment of any instalment due in pursuance of the composition or scheme, or if it appears to the Court that the composition or scheme cannot proceed without injustice or undue delay, or that the approval of the Court was obtained by fraud, the Court may, if thinks fit, on application by any person interested, adjudge the debtor bankrupt, and annul the composition or scheme, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done, under or in pursuance of the composition or scheme. Where a debtor is adjudged bankrupt under this sub-section, all debts, provable in other respects, which have been contracted before the date of such adjudication shall be provable in the bankruptcy.

Control over Person and Property of Debtor.

[46 & 47 Vic., c. 52, s. 24.]

Duties of debtor as to discovery and realization of property.

23. *(1)* Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

(2) He shall give such inventory of his property, such list of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the official receiver, special manager or trustee, execute such powers-of-attorney, conveyances, deeds and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the official receiver, special manager or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the official receiver, special manager, trustee or any creditor or person interested.

(3) He shall, if adjudged bankrupt, aid, to the utmost of his power, in the realization of his property and the distribution of the proceeds among his creditors.

(4) If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property, which is divisible amongst his creditors under this Act, and which is for the time being in his possession or under his control, to the official receiver or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of Court, and may be punished accordingly.

Arrest of debtor under certain circumstances.

24. *(1)* The Court may, by warrant addressed to any police-officer or prescribed officer of the Court, cause a debtor to be arrested in British India, and any books, papers, money and goods in his possession there to be seized, and him and them to be safely kept as prescribed until such time as the Court may order under the following circumstances:—

(a) if, after a bankruptcy notice has been issued under this Act, or after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable reason for believing that he is about to abscond with a view of avoiding payment of the debt in respect of which the bankruptcy notice was issued, or of avoiding service of a bankruptcy petition, or of avoiding appearance to any such petition, or of avoiding examination in respect of his affairs, or of otherwise avoiding, delaying or embarassing proceedings in bankruptcy against him;

(b) if, after presentation of a bankruptcy petition by or against him, it appears to the Court that there is probable cause for believing that he is about to remove his property with a view of preventing or delaying possession being taken of it by the official receiver or trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his property or any books, documents or writings which might be of use to his creditors in the course of his bankruptcy;

(c) if, after service of a bankruptcy petition on him, or after a receiving order is made against him, he removes any property in his possession above the value of fifty rupees without the leave of the official receiver or trustee;

(d) if, without good cause shown, he fails to attend any examination ordered by the Court:

Provided that no arrest upon a bankruptcy notice shall be valid and protected unless the debtor before or at the time of his arrest shall be served with such bankruptcy notice.

(2) No payment or composition made or security given after arrest made under this section shall be exempt from the provisions of the Act relating to fraudulent preferences.

Re-direction of debtor's letters.

25. Where a receiving order is made against a debtor, the Court, on the application of the official receiver or trustee, may, from time to time, order that for such time, not exceeding three months, as the Court thinks fit, post letters addressed to the debtor at any place or places mentioned in the order for re-direction shall be re-directed, sent or delivered by the Postal authorities in British India to the official receiver, or the trustee, or otherwise as the Court directs, and the same shall be done accordingly.

Discovery of debtor's property.

26. *(1)* The Court may, on the application of the official receiver or trustee, at any time after a receiving order has been made against a debtor, summon before it the debtor or his wife, or any person known or suspected to have in his possession any property belonging to the debtor, or supposed to be indebted to the debtor, or any person whom the Court may deem capable of giving information respecting the debtor, his dealings or property; and the Court may require any such person to produce any documents in his custody or power relating to the debtor, his dealings or property.

The Indian Bankruptcy Bill, 1885.

(Part II.—Annulment of Adjudication.—Sections 27-30.)

(2) If any person so summoned, after having been tendered a reasonable sum, refuses to come before the Court at the time appointed, or refuses to produce any such document, having no lawful impediment made known to the Court at the time of its sitting and allowed by it, the Court may, by warrant, cause him if in British India to be apprehended and brought up for examination.

(3) The Court may examine on oath, either by word of mouth or by written interrogatories, any person so brought before it concerning the debtor, his dealings or property.

(4) If any person on examination before the Court admits that he is indebted to the debtor, the Court may, on the application of the official receiver or trustee, order him to pay to the receiver or trustee, at such time and in such manner as to the Court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the Court thinks fit, with or without costs of the examination.

(5) If any person on examination before the Court admits that he has in his possession any property belonging to the debtor, the Court may, on the application of the official receiver or trustee, order him to deliver to the official receiver or trustee such property, or any part thereof, at such time, and in such manner, and on such terms as to the Court may seem just.

(6) The Court may, if it think fit, issue a commission for the examination beyond the limits of British India of any person who if in British India would be liable to be brought before it for examination under this section.

Discharge of Bankrupt.

Vic., 17 & c. c.

Discharge of bankrupt.

27. (1) A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court shall appoint a day for hearing the application, but the application shall not be heard until the public examination of the bankrupt is concluded. The application shall be heard in open Court.

(2) On the hearing of the application the Court shall take into consideration a report of the official receiver as to the bankrupt's conduct and affairs, and may either grant or refuse an absolute order of discharge, or suspend the operation of the order for a specified time, or grant an order of discharge subject to any conditions with respect to any earnings or income which may afterwards become due to the bankrupt, or with respect to his after-acquired property: Provided that the Court shall refuse the discharge in all cases where the bankrupt has committed any offence under this Act, or under section 421, 422, 423 or 424 of the Indian Penal Code or any amendment thereof, and shall, on proof of any of the facts hereinafter mentioned, either refuse the order, or suspend the operation of the order for a specified time, or grant an order of discharge, subject to such conditions as aforesaid.

Vic., 10 & 1860

(3) The facts hereinbefore referred to are—

(a) that the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him and as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy;

(b) that the bankrupt has continued to trade after knowing himself to be insolvent;

(c) that the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it;

(d) that the bankrupt has brought on his bankruptcy by rash and hazardous speculations or unjustifiable extravagance in living;

(e) that the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action or suit properly brought against him;

(f) that the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they become due, given an undue preference to any of his creditors;

(g) that the bankrupt has on any previous occasion been adjudged bankrupt, or made under any enactment in force in any part of Her Majesty's dominions a composition or arrangement with his creditors;

(h) that the bankrupt has been guilty of any fraud or fraudulent breach of trust.

(4) For the purposes of this section the report of the official receiver shall be *primâ facie* evidence of the statements therein contained.

(5) Notice of the appointment by the Court of the day for hearing the application for discharge shall be published in the prescribed manner and sent fourteen days at least before the day so appointed to each creditor who has proved, and the Court may hear the official receiver and the trustee, and may also hear any creditor. At the hearing the Court may put such questions to the debtor and receive such evidence as it may think fit.

[11 & 12 Vic., c. 21, ss. 85 & 86.]

(6) The Court may, in making an order of discharge, pass a decree against the debtor in favour of the official receiver or trustee for any balance of the debts provable under the bankruptcy which is not satisfied at the date of his discharge; but in such case the decree shall not be executed without leave of the Court, which leave may be given on proof that the bankrupt has since his discharge acquired property or income available for payment of his debts.

[11 & 12 Vic., c. 21, s. 38.]

(7) A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realization and distribution of such of his property as is vested in the trustee, and if he fails to do so he shall be guilty of a contempt of Court; and the Court may also, if it thinks fit, revoke his discharge, but without prejudice to the validity of any sale, disposition or payment duly made or thing duly done subsequent to the discharge, but before its revocation.

Fraudulent settlements.

[46 & 47 Vic., c. 52, s. 20.]

28. In either of the following cases; that is to say:—

(1) in the case of a settlement made before and in consideration of marriage where the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or

(2) in the case of any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being money or property of or in right of his wife);

if the settlor is adjudged bankrupt or compounds or arranges with his creditors, and it appears to the Court that such settlement, covenant or contract was made in order to defeat or delay creditors, or was unjustifiable having regard to the state of the settlor's affairs at the time when it was made, the Court may refuse or suspend an order of discharge or grant an order subject to conditions or refuse to approve a composition or arrangement, as the case may be, in like manner as in cases where the debtor has been guilty of fraud.

Effect of order of discharge.

[11 & 12 Vic., c. 21, ss. 48 & 62. 46 & 47 Vic., c. 52, s. 30.]

29. (1) An order of discharge shall not release the bankrupt from any debt on a recognizance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown or of any person for any offence against an enactment relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence; and he shall not be discharged from such excepted debts unless the Government certifies in writing its consent to his being discharged therefrom.

(2) An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or fraudulent breach of trust to which he was a party, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was a party.

(3) An order of discharge shall release the bankrupt from all other debts provable in bankruptcy.

(4) An order of discharge shall be conclusive evidence of the bankruptcy, and of the validity of the proceedings therein; and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by the order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this Act and the special matter in evidence.

[11 & 12 Vic., c. 21, ss. 50 & 60.]

(5) An order of discharge shall not release any person who at the date of the receiving order was a partner or co-trustee with the bankrupt or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

PART II.

ANNULMENT OF ADJUDICATION.

Power for Court to annul adjudication in certain cases.

[11 & 12 Vic., c. 21, ss. 9 & 9. 46 & 47 Vic., c. 52, s. 36.]

30. (1) Where in the opinion of the Court a debtor ought not to have been adjudged bankrupt, or where it is proved to the satisfaction of the Court that the debts of the bankrupt are paid in full, or where proceedings are pending in the United Kingdom or any other part of Her Majesty's dominions beyond the limits of British India for the distribution of the estate and effects of the bankrupt among his creditors under the Bankrupt or Insolvent Laws of that part of Her Majesty's dominions, and it appears to

[New.]

the Court that the distribution ought to take place in that part of Her Majesty's dominions, the Court may, on the application of any person interested, by order, annul the adjudication.

[11 & 12 Vic., c. 21, ss. 7 & 11.] (2) Where an adjudication is annulled under this section, all sales and dispositions of property and payments duly made, and all acts theretofore done, by the official receiver, trustee or other person acting under their authority, or by the Court, shall be valid, but the property of the debtor who was adjudged bankrupt shall vest in such person as the Court may appoint, or in default of any such appointment revert to the debtor for all his estate or interest therein on such terms and subject to such conditions, if any, as the Court may declare by order.

(3) Notice of the order annulling an adjudication shall be forthwith published in the prescribed manner.

[46 & 47 Vic., c. 52, s. 36.] (4) For the purposes of this section any debt disputed by a debtor shall be considered as paid in full if the debtor enters into a bond, in such sum and with such sureties as the Court approves, to pay the amount to be recovered in any proceeding for the recovery of or concerning the debt, with costs; and any debt due to a creditor who cannot be found or cannot be identified shall be considered as paid in full if paid into Court.

PART III.

ADMINISTRATION OF PROPERTY.

Proof of Debts.

[11 & 12 Vic., c. 21, s. 31. 46 & 47 Vic., c. 52, s. 37.] **31.** (1) Demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise or breach of trust shall not be provable in bankruptcy. Description of debts provable in bankruptcy.

(2) A person having notice of any act of bankruptcy available against the debtor shall not prove under the order for any debt or liability contracted by the debtor subsequently to the date of his so having notice.

(3) Save as aforesaid, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, shall be deemed to be debts provable in bankruptcy.

[11 & 12 Vic., c. 21, s. 40.] (4) An estimate shall be made by the trustee of the value of any debt or liability provable as aforesaid which by reason of its being subject to any contingency or contingencies, or for any other reason, does not bear a certain value.

(5) Any person aggrieved by any estimate made by the trustee as aforesaid may appeal to the Court.

(6) If, in the opinion of the Court, the value of the debt or liability is incapable of being fairly estimated, the Court may make an order to that effect, and thereupon the debt or liability shall, for the purposes of this Act, be deemed to be a debt not provable in bankruptcy.

(7) If, in the opinion of the Court, the value of the debt or liability is capable of being fairly estimated, the Court may direct the value to be assessed before the Court itself, and may give all necessary directions for this purpose, and the amount of the value when assessed shall be deemed to be a debt provable in bankruptcy.

(8) "Liability" shall for the purposes of this Act include any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement or undertaking, whether the breach does or does not occur, or is or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it shall include any express or implied engagement, agreement or undertaking to pay, or capable of resulting in the payment of, money, or money's worth, whether the payment is as respects amount fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules or as matter of opinion.

[11 & 12 Vic., c. 21, s. 39. 46 & 47 Vic., c. 52, s. 38.] **32.** Where there have been mutual credits, mutual debts or other mutual dealings between a debtor against whom a receiving order shall be made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set off against any sum due from the other party, and the balance of the account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had at the time of giving credit to the debtor notice of an act of bankruptcy committed by the debtor and available against him. Mutual credit and set-off.

33. With respect to the mode of proving debts, the right of proof by secured and other creditors, the admission and rejection of proofs, and the other matters referred to in the second schedule, the rules in that schedule shall be observed. Rules as to proof of debts.

34. (1) In the distribution of the property of a bankrupt there shall be paid in priority to all other debts— Priority of debts.

(a) all revenue, taxes, cesses and rates, whether payable to Her Majesty, to any local authority or otherwise, due from the bankrupt at the date of the receiving order, and having become due and payable within twelve months next before such time;

(b) all wages or salary of any clerk or servant in respect of services rendered to the bankrupt during four months before the date of the receiving order, not exceeding five hundred rupees; and

(c) all wages of any labourer or workman, not exceeding five hundred rupees, whether payable for time or piece-work, in respect of services rendered to the bankrupt during four months before the date of the receiving order.

(2) The foregoing debts shall rank equally between themselves, and shall be paid in full, unless the property of the bankrupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3) In the case of partners the joint estate shall be applicable in the first instance in payment of their joint debts, and the separate estate of each partner shall be applicable in the first instance in payment of his separate debts. If there is a surplus of the separate estates, it shall be dealt with as part of the joint estate. If there is a surplus of the joint estate, it shall be dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate.

(4) Subject to the provisions of this Act, all debts proved in the bankruptcy shall be paid *pari passu*.

(5) If there is any surplus after payment of the foregoing debts, it shall be applied in payment of interest from the date of the receiving order at the rate of four per centum per annum on all debts proved in the bankruptcy.

35. (1) Where at the time of the presentation of the bankruptcy petition any person is apprenticed or is an articled clerk to the bankrupt, the adjudication of bankruptcy shall, if either bankrupt or apprentice or clerk gives notice in writing to the trustee to that effect, be a complete discharge of the contract of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of the apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on this behalf, pay such sum as the trustee, subject to an appeal to the Court, thinks reasonable, out of the bankrupt's property, to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the contract or articles before the commencement of the bankruptcy, and to the other circumstances of the case. Preferential claim in case of apprenticeship.

(2) Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the contract of apprenticeship or articles of agreement to some other person.

36. (1) The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, exercise his right of distraint (if any) upon the property of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the surplus due for which the distress may not have been available. Power to landlord to distrain for rent.

(2) For the purposes of this section the term "order of adjudication" shall be deemed to include an order for the administration of the estate of a deceased person who dies insolvent.

Property available for Payment of Debts.

37. The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on Relation back of trustee's title.

The Indian Bankruptcy Bill, 1885.
(Part III.—Administration of Property.—Sections 38-41.)

which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor.

Description of bankrupt's property divisible amongst creditors.

38. The property of the bankrupt divisible amongst his creditors, and in this Act referred to as the property of the bankrupt, shall not comprise the following particulars:—

(1) property held by the bankrupt on trust for any other person;

(2) the tools (if any) of his trade and the necessary wearing-apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding two hundred rupees in the whole:

But it shall comprise the following particulars:—

(i) all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy or may be acquired by or devolve on him before his discharge;

(ii) the capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of nomination to a vacant ecclesiastical benefice; and

(iii) all moveable property being, at the commencement of the bankruptcy, in the possession, order or disposition of the bankrupt, in his trade or business, by the consent and permission of the true owner, under such circumstances that he is the reputed owner thereof: Provided that things in action, other than debts due or growing due to the bankrupt in the course of his trade or business, shall not be deemed moveable property within the meaning of this section.

Effect of Bankruptcy on antecedent Transactions.

Restriction of rights of creditor under execution.

39. *(1)* Where execution of a degree has issued against the property of a debtor, no person shall be entitled to the benefit of the execution against the trustee in bankruptcy of the debtor, except in respect of assets realized in the course of the execution by sale or otherwise before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor, has been given to the Court executing the decree.

(2) Nothing in this section shall affect the rights of a mortgagee or encumbrancer of property against which a decree is executed.

Duties of Court executing decree as to goods taken in execution.

40. *(1)* Where execution of a decree has issued against any property of a debtor which is saleable in execution, and before the sale thereof notice is given to the Court executing the decree that a receiving order has been made against the debtor, the Court shall, on application, direct the property to be delivered to the official receiver or trustee under the order, but the costs of the execution shall be a charge on the property so delivered, and the official receiver or trustee may sell the property or an adequate part thereof for the purpose of satisfying the charge.

(2) An execution levied against the property of a debtor is not invalid by reason only of its being an act of bankruptcy, and a person who purchases the property in good faith under a sale in execution shall in all cases acquire a good title to them against the trustee in bankruptcy.

Avoidance of voluntary settlements.

41. *(1)* Any settlement of property not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife, shall, if the settlor becomes bankrupt within two years after the date of the settlement, be void against the trustee in the bankruptcy, and shall, if the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, be void against the trustee in the bankruptcy, unless the parties claiming under the settlement can prove that the settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement, and that the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

(2) Any covenant or contract made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property or of in right of his wife, shall, on his becoming bankrupt before the property or money has been actually transferred or paid pursuant to the contract or covenant, be void against the trustee in the bankruptcy.

(3) "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

Avoidance of preferences in certain cases.

[11 & 12 Vic., c. 21, s. 24. 46 & 47 Vic., c. 52, s. 48.]

42. *(1)* Every conveyance or transfer of property or charge thereon made, every payment made, every obligation incurred and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due from his own money in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying or suffering the same is adjudged bankrupt on a bankruptcy petition presented within three months after the date of making, taking, paying or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

(2) This section shall not affect the rights of any person making title in good faith and for valuable consideration through or under a creditor of the bankrupt.

Protection of *bona fide* transactions without notice.

[46 & 47 Vic., c. 52, s. 49.]

43. Subject to the foregoing provisions of this Act with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in this Act shall invalidate in this case of a bankruptcy—

(a) any payment of the bankrupt to any of his creditors;

(b) any payment or delivery to the bankrupt;

(c) any conveyance or assignment by the bankrupt for valuable consideration;

(d) any contract, dealing or transaction by or with the bankrupt for valuable consideration:

Provided that both the following conditions are complied with, namely:—

(1) the payment, delivery, conveyance, assignment, contract, dealing or transaction, as the case may be, takes place before the date of the receiving order; and

(2) the person (other than the debtor) to, by or with whom the payment, delivery, conveyance, assignment, contract, dealing or transaction was made, executed or entered into, has not at the time of the payment, delivery, conveyance, assignment, contract, dealing or transaction notice of any available act of bankruptcy committed by the bankrupt before that time.

Realization of Property.

Possession of property by trustee.

[11 & 12 Vic., c. 21, s. 21. 46 & 47 Vic., c. 52, s. 50.]

44. *(1)* The trustee shall, as soon as may be, take possession of the deeds, books and documents of the bankrupt, and all other parts of his property capable of manual delivery.

(2) The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed under section 503 of the Code of Civil Procedure, and shall have such of the powers conferable on a receiver under that section as may be specified in general rules, and the Court may on his application enforce such acquisition or retention accordingly. XIV of 1882.

[11 & 12 Vic., c. 21, s. 25.]

(3) Where any part of the property of the bankrupt consists of stock, shares in ships, shares or any other property transferable in the books of any company, office or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

(4) Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee.

(5) Any treasurer or other officer, or any banker, attorney or agent of a bankrupt, shall pay and deliver to the trustee all money and securities in his possession or power, as such officer, banker, attorney or agent, which he is not by law entitled to retain as against the bankrupt or the trustee. If he does not, he shall be guilty of a contempt of Court, and may be punished accordingly on the application of the trustee.

The Indian Bankruptcy Bill, 1885.

(Part III.—Administration of Property.—Sections 45-49.)

[46 & 47 Vic., c. 52, s. 51.]

Seizure of property of bankrupt.

45. Any person acting under warrant of the Court may seize any part of the property of a bankrupt in the custody or possession of the bankrupt, or of any other person in British India, and with a view to such seizure may break open any house, building or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the Court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place in British India not belonging to him, the Court may, if it thinks fit, grant a search-warrant to any Police-officer or officer of the Court, who may execute it according to its tenor.

[11 & 12 Vic., c. 21, s. 27. 46 & 47 Vic., c. 52, s. 53.]

Appropriation of portion of pay or salary to creditors.

46. *(1)* Where a bankrupt is an officer of the army or navy or of Her Majesty's Indian marine service, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst the creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct. Before making any order under this sub-section the Court shall communicate with the chief officer of the department as to the amount, time and manner of the payment to the trustee, and shall obtain the written consent of the chief officer to the terms of such payment.

(2) Where a bankrupt is in the receipt of a salary or income other than as aforesaid, or is entitled to any half pay, or pension, or to any compensation granted by the Government, the Court, on the application of the trustee, shall, from time to time, make such order as it thinks just for the payment of the salary, income, half pay, pension or compensation, or of any part thereof, to the trustee to be applied by him in such manner as the Court may direct.

(3) Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half pay or compensation of any bankrupt to be forfeited.

[11 & 12 Vic., c. 21, s. 7. 46 & 47 Vic., c. 52, s. 54.]

Vesting and transfer of property.

47. *(1)* Until a trustee is appointed the official receiver shall be the trustee for the purposes of this Act, and, immediately on a debtor being adjudged bankrupt, the property of the bankrupt shall vest in the trustee.

(2) On the appointment of a trustee the property shall forthwith pass to and vest in the trustee appointed.

[11 & 12 Vic., c. 21, s. 20.]

(3) The property of the bankrupt shall pass from trustee to trustee, including under that term the official receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment or transfer whatever.

[46 & 47 Vic., c. 52, s. 55.]

Disclaimer of onerous property.

48. *(1)* Where any part of the property of the bankrupt consists of any tenancy burdened with onerous covenants, of shares or stock in companies, of unprofitable contracts, or of any other property that is unsaleable or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act, or to the payment of any sum of money, the trustee, notwithstanding that he has endeavoured to sell or has taken possession of the property, or exercised any act of ownership in relation thereto, but subject to the provisions of this section, may, by writing signed by him, at any time within three months after the adjudication of bankruptcy, or, where a person other than the official receiver is appointed trustee, after the first appointment of a trustee, disclaim the property:

Provided that where any such property shall not have come to the knowledge of the trustee within one month after the adjudication or appointment (as the case may be), he may disclaim such property at any time within two months after he first became aware thereof.

(2) The disclaimer shall operate to determine, as from the date of disclaimer, the rights, interests and liabilities of the bankrupt and his property in or in respect of the property disclaimed, and shall also discharge the trustee from all personal liability in respect of the property disclaimed as from the date when the property vested in him, but shall not, except so far as is necessary for the purpose of releasing the bankrupt and his property and the trustee from liability, affect the rights or liabilities of any other person.

(3) A trustee shall not be entitled to disclaim a tenancy without the leave of the Court, except in any cases which may be prescribed by general rules; and the Court may, before or on granting such leave, require such notices to be given to persons interested, and impose such terms as a condition of granting leave and make such orders with respect to fixtures, tenant's improvements and other matters arising out of the tenancy as the Court thinks just.

(4) The trustee shall not be entitled to disclaim any property in pursuance of this section in any case where an application in writing has been made to the trustee by any person interested in the property requiring him to decide whether he will disclaim or not, and the trustee has for a period of twenty-eight days after the receipt of the application, or such extended period as may be allowed by the Court, declined or neglected to give notice whether he disclaims the property or not; and, in the case of a contract, if the trustee, after such application as aforesaid, does not within the said period or extended period disclaim the contract, he shall be deemed to have adopted it.

(5) The Court may, on the application of any person who is, as against the trustee, entitled to the benefit or subject to the burden of a contract made with the bankrupt, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise, as to the Court may seem equitable, and any damages payable under the order to any such person may be proved by him as a debt under the bankruptcy.

(6) The Court may, on application by any person either claiming any interest in any disclaimed property, or under any liability not discharged by this Act in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto, or to whom it may seem just that the same should be delivered by way of compensation for such liability as aforesaid, or a trustee for him, and on such terms as the Court thinks just; and, on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf without any conveyance or assignment for the purpose:

Provided always that, where the property disclaimed is a tenancy, the Court shall not make a vesting order in favour of any person claiming under the bankrupt, whether as under-tenant or as mortgagee by demise, except upon the terms of making such person subject to the same liabilities and obligations as the bankrupt was subject to under the tenancy in respect of the property at the date when the bankruptcy petition was filed, and any mortgagee or under-tenant declining to accept a vesting order upon such terms shall be excluded from all interest in and security upon the property; and if there shall be no person claiming under the bankrupt who is willing to accept an order upon such terms, the Court shall have power to vest the bankrupt's estate and interest in the property in any person bound either personally or in a representative character, and either alone or jointly with the bankrupt, to discharge the tenant's liabilities and obligations, freed and discharged from all estates, incumbrances and interests created therein by the bankrupt.

(7) Any person injured by the operation of a disclaimer under this section shall be deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove the same as a debt under the bankruptcy.

Powers of trustee to deal with property.

49. *(1)* Subject to the provisions of this Act, the trustee may do or any of the following things:— [11 & 12 Vic., c. 32, s. 1.]

(a) sell all or any part of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels; [11 & 12 Vic., c. 21, s. 11.]

(b) give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof;

(c) prove, rank, claim and draw a dividend in respect of any debt due to the bankrupt;

(d) exercise any powers the capacity to exercise which is vested in the trustee under this Act, and execute any powers-of-attorney, deeds and other instruments for the purpose of carrying into effect the provisions of this Act; [11 & 12 Vic., c. 21, s. 11.]

(e) deal with property to which the bankrupt is beneficially entitled as tenant in tail or other owner of an estate of inheritance less than an estate in fee-simple in the same manner as the bankrupt might have dealt with it. [23 & 24 Vic., c. 145, s. 15.]

(2) Any dealing by a trustee under clause (*c*) with any property to which the bankrupt is before his discharge entitled as in that clause mentioned shall, although the bankrupt be dead at the time of that dealing, be as valid and have the same operation as if the bankrupt were then alive. [23 & 24 Vic., c. 145, s. 15.]

The Indian Bankruptcy Bill, 1885.

(Part IV.—Official Receivers.—Sections 50-60.)

Vic., c.]

50. The trustee may, with the permission of the committee of inspection, do all or any of the following things:—

Powers exercisable by trustee with permission of committee of inspection.

(1) carry on the business of the bankrupt, so far as may be necessary for the beneficial winding up of the same;

Vic., c. *(2)* bring, institute or defend any action, suit or other legal proceeding relating to the property of the bankrupt;

(3) employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection;

(4) accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time subject to such stipulations as to security and otherwise as the committee think fit;

(5) mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts;

c., c. *(6)* refer any dispute to arbitration, compromise all debts, claims and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms as may be agreed on;

(7) make such compromise or other arrangement as may be thought expedient with creditors, or persons claiming to be creditors, in respect of any debts provable under the bankruptcy;

(8) make such compromise or other arrangement as may be thought expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person;

(9) divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases.

Distribution of Property.

..c. **51.** *(1)* Subject to the retention of such sums as may be necessary for the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

c. Declaration and distribution of dividends.

(2) The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

(3) Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months.

(4) Before declaring a dividend the trustee shall cause notice of his intention to do so to be published in the prescribed manner, and shall also send reasonable notice thereof to each creditor mentioned in the bankrupt's statement who has not proved his debts.

(5) When the trustee has declared a dividend he shall send to each creditor who has proved a notice showing the amount of the dividend and when and how it is payable, and a statement in the prescribed form as to the particulars of the estate.

52. *(1)* Where one partner of a firm is adjudged bankrupt, a creditor to whom the bankrupt is indebted jointly with the other partners of the firm, or any of them, shall not receive any dividend out of the separate property of the bankrupt until all the separate creditors have received the full amount of their respective debts.

Joint and separate dividends.

(2) Where joint and separate properties are being administered, dividends of the joint and separate properties shall, subject to any order to the contrary that may be made by the Court on the application of any person interested, be declared together; and the expenses of and incident to such dividends shall be fairly apportioned by the trustee between the joint and separate properties, regard being had to the work done for and the benefit received by each property.

53. In the calculation and distribution of a dividend the trustee shall make provision for debts provable in bankruptcy, appearing from the bankrupt's statement, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their proofs, or to establish them if disputed, and also for debts provable in bankruptcy the subject of claims not yet determined. He shall also make provision for any disputed proofs or claims, and for the expenses necessary for the administration of the estate or otherwise, and, subject to the foregoing provisions, he shall distribute as dividend all money in hand.

[11 & 12 Vic., c. 21, s. 43. 46 & 47 Vic., c. 52, s. 60.]

Provisions for creditors residing at a distance, &c.

54. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid out of any money for the time being in the hands of the trustee any dividend or dividends he may have failed to receive before that money is applied to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved by reason that he has not participated therein.

[46 & 47 Vic., c. 52, s. 61.]

Right of creditor who has not proved debt before declaration of a dividend.

55. When the trustee has realized all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the trusteeship, he shall declare a final dividend, but before so doing he shall give notice in manner prescribed to the persons whose claims to be creditors have been notified to him, but not established to his satisfaction, that if they do not establish their claims to the satisfaction of the Court within a time limited by the notice he will proceed to make a final dividend without regard to their claims. After the expiration of the time so limited, or, if the Court on application by any such claimant grant him further time for establishing his claims, then on the expiration of such further time the property of the bankrupt shall be divided among the creditors who have proved their debts, without regard to the claims of any other persons.

[46 & 47 Vic., c. 52, s. 62.]

Final dividend.

56. No suit or action for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend the Court may, if it thinks fit, order him to pay it, and also to pay out of his own money interest thereon for the time that it is withheld, and the costs of the application.

[11 & 12 Vic., c. 21, s. 45. 46 & 47 Vic., c. 53, s. 63.]

No suit for dividend.

57. *(1)* The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt or of any part thereof, or to carry on the trade (if any) of the bankrupt for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

[46 & 47 Vic., c. 52, s. 64.]

Power to allow bankrupt to manage property.

(2) The trustee may, from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court.

[11 & 12 Vic., c. 21, s. 47.]

Allowance to bankrupt for maintenance or service.

58. The bankrupt shall be entitled to any surplus remaining after payment in full of his creditors, with interest, as by this Act provided, and of the costs, charges and expenses of the proceedings under the bankruptcy petition.

[46 & 47 Vic., c. 52, s. 65.]

Right of bankrupt to surplus.

PART IV.

OFFICIAL RECEIVERS.

59. *(1)* The Chief Justice of each High Court may, at any time after the passing of this Act, and, from time to time, appoint such person as he thinks fit to be official receiver of debtors' estates for that Court, and may remove any person so appointed from that office.

[11 & 12 Vic., c. 21, s. 14. 46 & 47 Vic., c. 52, s. 66 (1).]

Appointment of official receivers of debtors' estates.

(2) The Local Government may in like manner appoint any such person as it thinks fit to be official receiver of debtors' estates for any other Court having bankruptcy jurisdiction under this Act, and remove any person so appointed from such office.

60. *(1)* The duties of the official receiver shall have relation both to the conduct of the debtor and to the administration of the estate.

[46 & 47 Vic., c. 53, s. 66.]

Status of official receiver.

(2) An official receiver may, for the purpose of affidavits verifying proofs, petitions or other proceedings under this Act, administer oaths.

The Indian Bankruptcy Bill, 1885.
(Part V.—Trustees.—Sections 61-67.)

(3) All expressions referring to the trustee under a bankruptcy shall, unless the context otherwise requires or the Act otherwise provides, include the official receiver when acting as trustee.

(4) The trustee shall supply the official receiver with such information and give him such access to, and facilities for inspecting, the bankrupt's books and documents, and generally shall give him such aid, as may be requisite for enabling the official receiver to perform his duties under this Act.

[46 & 47 Vic., c. 52, s. 69.]

Duties of official receiver as regards the debtor's conduct.

61. As regards the debtor, it shall be the duty of the official receiver—

(1) to investigate the conduct of the debtor and to report to the Court, stating whether there is reason to believe that the debtor has committed any act which constitutes an offence under this Act or under section 421, 422, 423 or 424 of the Indian Penal Code or any amendment thereof, or which would justify the Court in refusing, suspending or qualifying an order for his discharge;

XLV of 1860.

(2) to make such other reports concerning the conduct of the debtor as the Court may direct;

(3) to take such part as may be directed by the Court in the public examination of the debtor;

(4) to take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Court may direct.

[46 & 47 Vic., c. 52, s. 70.]

Duties of official receiver as to debtor's estate.

62. *(1)* As regards the estate of a debtor it shall be the duty of the official receiver—

(a) pending the appointment of trustee, to act as interim receiver of the debtor's estate, and, where a special manager is not appointed, as manager thereof;

(b) to authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do;

(c) to summon and preside at the first meeting of creditors;

(d) to issue forms of proxy for use at the meetings of creditors;

(e) to report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs;

(f) to advertise the receiving order, the date of the creditors' first meeting and of the debtor's public examination, and such other matters as it may be necessary to advertise;

(g) to act as trustee where no trustee is appointed or during any vacancy in the office of trustee.

(2) For the purpose of his duties as interim receiver or manager the official receiver shall have such of the powers conferable on a receiver appointed under section 503 of the Code of Civil Procedure as may be specified in the general rules, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property; and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Court otherwise orders, incur any expense beyond such as is requisite for the protection of the debtor's property or the disposing of perishable goods:

XIV of 1882.

Provided that, when the debtor cannot himself prepare a proper statement of affairs, the official receiver may, subject to any prescribed conditions, and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs.

(3) Every official receiver shall account to the Court and pay over all moneys and deal with all securities in such manner as the Court, from time to time, directs.

PART V.

TRUSTEES.

Remuneration of Trustee.

[11 & 12 Vic., c. 1, s. 19. 46 & 47 Vic., c. 52, s. 72.]

Remuneration of trustee.

63. *(1)* Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or, if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realized, after deducting any sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend.

(2) If one-fourth in number or value of the creditors dissent from the resolution, or the bankrupt satisfies the Court that the remuneration is unnecessarily large, the Court shall fix the amount of the remuneration.

(3) The resolution shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt's estate, or to the creditors, in respect of any expenses which the remuneration is expressed to cover.

(4) Where no remuneration has been voted to a trustee, he shall be allowed out of the bankrupt's estate such proper costs and expenses incurred by him in or about the proceedings of the bankruptcy as the prescribed officer may allow.

(5) A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer or any other person that may be employed about a bankruptcy, any gift, remuneration or pecuniary or other consideration or benefit whatever beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager or trustee, to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy.

Costs.

[46 & 47 Vic., c. 52, s. 71.]

Allowance and taxation of costs.

64. *(1)* Where a trustee or manager receives remuneration for his services as such, no payment shall be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by this Act or the rules made under this Act to be performed by himself.

(2) Where the trustee is a solicitor, he may contract that the remuneration for his services as trustee shall include all professional services.

(3) All bills and charges of solicitors, managers, accountants, auctioneers, brokers and other persons, not being trustees, shall be taxed by the prescribed officer, and no payments in respect thereof shall be allowed in the trustee's accounts without proof of such taxation having been made. The officer shall satisfy himself before passing such bills and charges that the employment of such solicitors and other persons, in respect of the particular matters out of which such charges arise, has been duly sanctioned.

(4) Every such person shall, on request by the trustee (which request the trustee shall make a sufficient time before declaring a dividend), deliver his bill of costs or charges to the prescribed officer, and if he fails to do so within seven days after receipt of the request, or such further time as the Court, on application, may grant, the trustee shall declare and distribute the dividend without regard to any claim by him, and thereupon any such claim shall be forfeited as well against the trustee personally as against the estate.

Receipts, Payments, Accounts, Audit.

Bankruptcy estates account.

65. *(1)* An account called the bankruptcy estates account shall be kept by the Court with such Government treasury or bank as the Governor General in Council may direct, and all moneys realized on account of a bankrupt's estate by the Court or any officer thereof under this Act shall, unless it is otherwise prescribed, be paid to that account.

(2) Every trustee in bankruptcy shall, in such manner and at such times as the Court, with the sanction of the Governor General in Council, directs, pay the money received by him to the bankruptcy estates account, and the treasury or bank shall furnish him with a certificate of receipt of the money so paid.

(3) Subject to any general rules relating to small bankruptcies under Part VII of this Act, where the debtor at the date of the receiving order has an account at a bank, such account shall not be withdrawn until the expiration of seven days from the day appointed for the first meeting of creditors, unless the Court, for the safety of the account, or other sufficient cause, orders the withdrawal of the account.

(4) If a trustee at any time retains for more than ten days a sum exceeding five hundred rupees, or such other amount as the Court in any particular case authorizes him to retain, then, unless he explains the retention to the satisfaction of the Court, he shall pay interest on the amount so retained in excess at the rate of twenty per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Court, and shall be liable to pay any expenses occasioned by reason of his default.

(5) All payments out of money standing to the credit of the bankruptcy estates account shall be made by the treasury or bank in the prescribed manner.

Trustee not to pay into private account.

66. No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account.

Investment of surplus funds.

67. *(1)* Whenever the cash balance standing to the credit of the bankruptcy estates account is in excess of the amount which, in the opinion of the Court, is required for the time being to answer demands in respect of bankrupts' estates, the Court shall notify the same to such officer as the Governor General in Council may appoint in this behalf, and shall pay over the

The Indian Bankruptcy Bill, 1885.
(Part V.—Trustees.—Sections 68 to 79.)

same, or any part thereof, as the officer may direct, to the officer, and the officer may invest the said sums or any part thereof in Government securities to be placed to the credit of the said account.

(2) Whenever any part of the money so invested is, in the opinion of the Court, required to answer any demands in respect of bankrupts' estates, the Court shall notify to the officer the amount so required, and the officer shall thereupon repay to the Court such sum as may be required to the credit of the bankruptcy estates account, and for that purpose may direct the sale of such part of the said securities as may be necessary.

(3) The dividends on the investments under this section shall be paid to such account as the Governor General in Council may direct, and regard shall be had to the amount thus derived in fixing the fees payable in respect of bankruptcy proceedings.

12 Vic., s. 33, rules, 39.
47 Vic., s. 78.]

Audit of trustee's accounts.

68. (1) Every trustee shall, at such times as may be prescribed, but not less than twice in each year during his tenure of office, send to the Court, or as it directs, an account of his receipts and payments as such trustee.

(2) The account shall be in a prescribed form, shall be made in duplicate, and shall be verified by a declaration in the prescribed form.

(3) The Court shall cause the accounts so sent to be audited, and for the purposes of the audit the trustee shall furnish the Court with such vouchers and information as the Court may require, and the Court may at any time require the production of and inspect any books or accounts kept by the trustee.

(4) When any such account has been audited, a copy thereof shall be filed in the Court, and shall be open to the inspection of any creditor, or of the bankrupt, or of any person interested.

47 Vic., s. 79.

The trustee to furnish list of creditors.

69. The trustee shall, whenever required by any creditor so to do, and on payment by such creditor of the prescribed fee, furnish and transmit to such creditor by post a list of the creditors, showing in such list the amount of the debt due to each of such creditors.

47 Vic., s. 80.]

Books to be kept by trustee.

70. The trustee shall keep, in manner prescribed, proper books, in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed; and any creditor of the bankrupt may, subject to the control of the Court, personally or by his agent inspect any such books.

s. 81.]

Annual statement of proceedings.

71. (1) Every trustee in a bankruptcy shall from time to time, as may be prescribed, and not less than once in every year, during the continuance of the bankruptcy, submit to the Court a statement showing the proceedings in the bankruptcy up to the date of the statement, containing the prescribed particulars, and made out in the prescribed form.

(2) The Court shall cause the statements so transmitted to be examined, and shall call the trustee to account for any misfeasance, neglect or omission which may appear on the said statements or in his accounts or otherwise, and may require the trustee to make good any loss which the estate of the bankrupt may have sustained by the misfeasance, neglect or omission.

Release of Trustee.

Release of trustee.

72. (1) When the trustee has realised all the property of the bankrupt, or so much thereof as can, in his opinion, be realized without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by the reason of a composition having been approved, or as resigned, or has been removed from his office, the Court shall, on his application, cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Court, shall take into consideration the report, and any objection which may be urged by any creditor or person interested against the release of the trustee, and shall either grant or withhold the release accordingly.

(2) Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just, charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

(3) An order of the Court releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt, or otherwise in relation to his conduct as trustee; but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(4) Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the official receiver shall be the trustee.

Official Name.

[46 & 47 Vic., c. 52, s. 53.]

Official name of trustee.

73. The trustee may sue and be used by the official name of "the trustee of the property of , a bankrupt," inserting the name of the bankrupt, and by that name may hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office.

Appointment and Removal.

[46 & 47 Vic., c. 52, s. 54.]

Power to appoint joint or successive trustees.

74. (1) Subject to the provisions of this Act, the creditors may, if they think fit, appoint more persons than one to the office of trustee; and when more persons than one are appointed they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in this Act included under the term "trustee," and shall be joint-tenants of the property of the bankrupt.

(2) Subject as aforesaid, the creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first named declining to accept the office of trustee, or failing to give security, or not being approved of by the Court.

[46 & 47 Vic., c. 52, s. 55.]

Office of trustee vacated by insolvency.

75. If a receiving order is made against a trustee, he shall thereby vacate his office of trustee.

[11 & 12 Vic., c. 21, s. 18, 46 & 47 Vic., c. 52, s. 56.]

Removal of trustee.

76. (1) The creditors may, by ordinary resolution, at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy as hereinafter provided in case of a vacancy in the office of trustee.

(2) If the Court is of opinion that a trustee appointed by the creditors is guilty of misconduct, or fails to perform his duties under this Act, the Court may remove him from his office.

[46 & 47 Vic., c. 52, s. 57.]

Proceedings in case of vacancy in office of trustee.

77. (1) If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

(2) The official receiver shall, on the requisition of any creditor, summon a meeting for the purpose of filling any such vacancy.

(3) If the creditors do not within three weeks after the occurrence of a vacancy appoint a person to fill the vacancy, the official receiver shall report the matter to the Court, and the Court may appoint a trustee; but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment.

(4) If no trustee is appointed, and during any vacancy in the office of trustee, the official receiver shall act as trustee and shall have all the powers of a trustee.

Voting Powers of Trustee.

[46 & 47 Vic., c. 52, s. 59.]

Limitation of voting powers of trustee.

78. The vote of the trustee, or of his partner, clerk, solicitor or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee.

Control over Trustee.

[46 & 47 Vic., c. 52, s. 60.]

Discretionary powers of trustee and control thereof.

79. (1) Subject to the provisions of this Act, the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection; and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2) The trustee may, from time to time, summon general meetings of the creditors for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors, by resolution, either at the meeting appointing the trustee or otherwise, may direct, or whenever requested in writing to do so by one-fourth in value of the creditors.

The Indian Bankruptcy Bill, 1885.

(Part VI.—Constitution, Procedure and Powers of Court.—Sections 80-91.)

(3) The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy.

(4) Subject to the provisions of this Act, the trustee shall use his own discretion in the management of the estate and its distribution among the creditors.

[46 & 47 Vic., c. 2, s. 90.]

Appeal to Court against trustee.

80. If the bankrupt or any of the creditors or any other person is aggrieved by any act or decision of the trustee, he may apply to the Court; and the Court may confirm, reverse or modify the act or decision complained of, and make such order in the premises as it thinks just.

[46 & 47 Vic., c. 52, s. 91.]

Control of Court over trustees.

81. *(1)* The Court shall take cognizance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by any enactment or by rules or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Court by any creditor in regard thereto, the Court shall enquire into the matter and take such action thereon as may be deemed expedient.

(2) The Court may at any time require any trustee to answer any inquiry made by it in relation to any bankruptcy in which the trustee is engaged, and may examine on oath the trustee or any other person concerning the bankruptcy.

(3) The Court may also direct a local investigation to be made of the books and vouchers of the trustee.

PART VI.

CONSTITUTION, PROCEDURE AND POWERS OF COURT.

Jurisdiction.

[46 & 47 Vic., c. 52, s. 92.]

Courts having jurisdiction in bankruptcy.

82. *(1)* The Courts having jurisdiction in bankruptcy under this Act shall be—

(a) the High Courts of Judicature at Fort William, Madras and Bombay,

(b) the Court of the Recorder of Rangoon, and

(c) such other Civil Courts as the Local Government, with the previous sanction of the Governor General in Council, may, from time to time, appoint in this behalf in the territories administered by it.

[New]

Local limits of their jurisdiction.

83. For the purposes of this Act the local limits of the jurisdiction of the said Courts shall be as follows, namely :—

(a) the local limits of the jurisdiction of each of the said High Courts of Judicature shall be the local limits for the time being of its ordinary original civil jurisdiction ;

(b) the local limits of the jurisdiction of the Court of the Recorder of Rangoon shall comprise the towns of Rangoon, Moulmein, Akyab and Bassein ;

(c) the local limits of the jurisdiction of a Court appointed by a Local Government shall be such as may, from time to time, be fixed, with the previous sanction of the Governor General in Council, by that Local Government within the territories administered by it.

[11 & 12 Vic., c. 21, s. 2; 46 & 47 Vic., c. 52, s. 94 (2).]

Jurisdiction in Presidency High Court to be exercised by a single Judge.

84. All matters in respect of which jurisdiction is given by this Act shall, in each of the said High Courts of Judicature, be ordinarily transacted and disposed of by or under the direction of one of the Judges of that Court; and the Chief Justice shall, from time to time, assign a Judge for that purpose.

[46 & 47 Vic., c. 52, s. 97 (2).]

Transfer of proceedings from Court to Court.

85. Any proceedings in bankruptcy pending in any Court appointed by the Local Government of a province may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by the High Court of the province to itself or to any other Court appointed as aforesaid in the province.

[46 & 47 Vic., c. 52, s. 97 (3).]

Power to state special case.

86. If any question of law arises in any bankruptcy proceeding in a Court appointed by the Local Government of a province under section 82, and all the parties to the proceeding desire, or one of them and the Judge of the Court may desire, to have the question determined in the first instance in the High Court of the province, the Judge shall states the facts, in the form of a special case, for the opinion of that High Court. The special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Exercise of jurisdiction in chambers.

87. Subject to the provisions of this Act and to general rules, the Judge of a Court exercising jurisdiction in bankruptcy may exercise in chambers the whole or any part of his jurisdiction. [46 & 47 V. c. 52, s. 93.]

Delegation of powers to Presidency Judges of Small Causes.

88. *(1)* Subject to general rules limiting the powers conferred by this section, the High Court of Judicature at Fort William, Madras or Bombay may, from time to time, direct that, in any matters in respect of which jurisdiction is given to the Court by this Act, a Judge of the Presidency Small Cause Court appointed by it in this behalf shall have all or any of the powers in this section mentioned; and any order made or act done by such Judge of the Small Cause Court in the exercise of the said powers shall be deemed the order or act of the High Court. [46 & 47 V. c. 52, s. 93.]

(2) The powers referred to in sub-section *(1)* are the following, namely :—

(a) to hear bankruptcy petitions, and to make receiving orders and adjudications thereon ;

(b) to hold the public examination of debtors ;

(c) to grant orders of discharge ;

(d) to approve compositions or schemes of arrangement ;

(e) to make interim orders in any case of urgency ;

(f) to make any order or exercise any jurisdiction which by any rule in that behalf is prescribed as proper to be made or exercised in chambers ;

(g) to hear and determine any unopposed or *ex parte* application ;

(h) to summon and examine any person known or suspected to have in his possession effects of the debtor or to be indebted to him, or capable of giving information respecting the debtor, his dealings or property.

(3) A Judge of the Small Cause Court shall not have power to commit for contempt of Court.

Powers of Court appointed by Local Government.

89. A Court appointed by a Local Government under section 82 shall, for the purposes of its bankruptcy jurisdiction, in addition to its ordinary powers, have all the powers and jurisdiction possessed by any of the said High Courts of Judicature, and the orders of the Court may be enforced accordingly in manner prescribed. [46 & 47 V. c. 52, s. 1]

General power of Bankruptcy Courts.

90. *(1)* Subject to the provisions of this Act, every Court having jurisdiction in bankruptcy under this Act shall have full power to decide all questions of priorities, and all other questions whatsoever, whether of law or fact, which may arise in any case of bankruptcy coming within the cognizance of the Court, or which the Court may deem it expedient or necessary to decide for the purpose of doing complete justice or making a complete distribution of property in any such case. [46 & 47 V. c. 52, s. 9]

(2) A Court having jurisdiction in bankruptcy under this Act shall not be subject to be restrained in the execution of its powers under this Act by the order of any other Court, nor shall any appeal lie from its decisions, except in manner directed by this Act.

(3) Where a receiving order has been made in any of the said High Courts of Judicature under this Act, the Judge by whom such order was made shall have power, if he sees fit, without any further consent, to order the transfer to such Judge of any suit or action by or against the bankrupt pending before any other Judge or Judges of the Court.

(4) Where default is made by a trustee, debtor or other person in obeying any order or direction given by the Court or by an official receiver or any other officer of the Court under any power conferred by this Act, the Court may, on the application of the official receiver or other duly authorised person, order such defaulting trustee, debtor or person to comply with the order or direction so given ; and the Court may also, if it shall think fit, upon any such application, make an immediate order for the committal of such defaulting trustee, debtor or other person if in British India : Provided that the power given by this sub-section shall be deemed to be in addition to and not in substitution for any other right or remedy in respect of such default.

Appeals.

Appeals in bankruptcy.

91. *(1)* Every Court having jurisdiction in bankruptcy under this Act may review, rescind or vary any order made by it under its bankruptcy jurisdiction. [46 & 47 V. c. 52, s.]

(2) Orders in bankruptcy matters shall, at the instance of any person aggrieved, be subject to appeal as follows :—

(a) an appeal shall lie from the order of a single Judge of one of the said High Courts of Judicature to the High Court ;

(b) an appeal shall lie from the order of the Court of the Recorder of Rangoon to the Special Court;

(c) an appeal shall lie from the order of a Court appointed by a Local Government under section 82 to the High Court of the province;

(d) no appeal shall be entertained except in conformity with such general rules as may for the time being be in force in relation to the appeal.

Procedure.

Vic.,] Discretionary powers of the Court.

92. *(1)* Subject to the provisions of this Act and to general rules, the costs of and incidental to any proceeding in Court under this Act shall be in the discretion of the Court.

(2) The Court may at any time adjourn any proceedings before it upon such terms, if any, as it may think fit to impose.

(3) The Court may at any time amend any written process or proceeding under this Act upon such terms, if any, as it may think fit to impose.

(4) Where by this Act or by general rules the time for doing any act or thing is limited, the Court may extend the time either before or after the expiration thereof, upon such terms, if any, as the Court may think fit to impose.

(5) Subject to general rules, the Court may in any matter take the whole or any part of the evidence either *viva voce* or by interrogatories, or upon affidavit, or by commission beyond the limits of British India.

(6) For the purpose of approving a composition or scheme by joint debtors, the Court may, if it thinks fit, and on the report of the official receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad.

Vic., c.] Consolidation of petitions.

93. Where two or more bankruptcy petitions are presented against the same debtor or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

Vic., c. Power to change carriage of proceedings.

94. Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by this Act in the case of the petitioning creditor.

Vic., c. Continuance of proceedings on death of debtor.

95. If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive.

Vic., c. 9.] Power to stay proceedings.

96. The Court may at any time, for sufficient reason, make an order staying the proceedings under a bankruptcy petition, either altogether or for a limited time, on such terms and subject to such conditions as the Court may think just.

Vic., c. Power to present petition against one partner.

97. Any creditor whose debtor is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm may present a petition against any one or more partners of the firm without including the others.

Vic., c. Power to dismiss petition against some respondents only.

98. Where there are more respondents than one to a petition, the Court may dismiss the petition as to one or more of them, without prejudice to the effect of the petition as against the other or others of them.

Vic., c. Property of partners to be vested in same trustee.

99. Where a receiving order has been made on a bankruptcy petition against or by one member of a partnership, any other bankruptcy petition against or by a member of the same partnership shall be filed in or transferred to the Court in which the first-mentioned petition is in course of prosecution; and if a trustee has been appointed in respect of the property of the first-mentioned member of the partnership, the same trustee shall, unless the Court otherwise directs, be appointed in respect of the property of the last-mentioned member, and the Court may give such directions for consolidating the proceedings under the petitions as it thinks just.

Actions by trustee and bankrupt's partners.

100. Where a member of a partnership is adjudged bankrupt, the Court may authorise the trustee to commence and prosecute any suit or action in the names of the trustee and of the bankrupt's partner; and any release by such partner of the debt or demand to which the action relates shall be void; but notice of the application for authority to commence the suit or action shall be given to him, and he may show cause against it, and on his application the Court may, if it thinks fit, direct that he shall receive his proper share of the proceeds of the action, and if he does not claim any benefit therefrom he shall be indemnified against costs in respect thereof as the Court directs.

Actions on joint contracts. [46 & 47 Vic., c. 52, s. 114.]

101. Where a bankrupt is a contractor in respect of any contract jointly with any person or persons, such person or persons may sue or be sued in respect of the contract without the joinder of the bankrupt.

Proceedings in partnership name. [46 & 47 Vic., c. 52, s. 115.]

102. Any two or more persons, being partners, or any person carrying on business under a partnership name, may take proceedings or be proceeded against under this Act in the name of the firm; but in such case the Court may, on application by any person interested, order the names of the persons who are partners in such firm or the name of such person to be disclosed in such manner, and verified on oath, or otherwise as the Court may direct.

PART VII.

SMALL BANKRUPTCIES.

Summary administration in small cases. [46 & 47 Vic., c. 52, s. 121.]

103. When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the official receiver reports to the Court, that the property of the debtor is not likely to exceed in value three thousand rupees, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of this Act shall be subject to the following modifications:—

(a) if the debtor is adjudged bankrupt, the official receiver shall be the trustee in the bankruptcy;

(b) there shall be no committee of inspection, but the official receiver may do with the permission of the Court all things which may be done by the trustee with the permission of the committee of inspection;

(c) such other modifications may be made in the provisions of this Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of this Act relating to the examination or discharge of the debtor:

Provided that the creditors may at any time, with the previous permission of the Court, by special resolution, resolve that some person other than the official receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made.

PART VIII.

FRAUDULENT DEBTORS AND CREDITORS.

Local extent and construction of this Part.

104. *(1)* This part shall extend only to British India.

(2) "The Court" in this Part means the Court before which an accused person is tried.

(3) Nothing in this Part shall prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Part, or from being liable under that other law to any other or higher punishment or penalty than that provided by this Part:

Provided that a person shall not be punished twice for the same offence.

Punishment of fraudulent debtors. [32 & 33 Vic., c. 62, s. 11. 46 & 47 Vic., c. 52, s. 163.]

105. Any person against whom a receiving order has been under this Act shall, in each of the cases following, be punished with imprisonment which may extend to two years, or with fine, or with both; that is to say,—

(a) If he does not, to the best of his knowledge and belief, fully and truly discover to the trustee administering his estate for the benefit of his creditors all his property, and how, and to whom, and for what consideration, and when he disposed of any part thereof, except such part as has been disposed of in the ordinary way of his trade (if any), or laid out in the ordinary expense of his family, unless the Court is satisfied that he had no intent to defraud:

(b) If he does not deliver up to such trustee, or as he directs, all such part of his property as is in his custody or under his control, and which he is required by law to deliver up, unless the Court is satisfied that he had no intent to defraud:

(c) If he does not deliver up to such trustee, or as he directs, all books, documents, papers and writings in his custody or under his control relating to his property or affairs, unless the Court is satisfied that he had no intent to defraud:

The Indian Bankruptcy Bill, 1885.
(Part VIII.—Supplemental Provisions.—Sections 106-114.)

(d) If after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals any part of his property to the value of one hundred rupees or upwards, or conceals any debt due to or from him, unless the Court is satisfied that he had no intent to defraud:

(e) If after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he fraudulently removes any part of his property of the value of one hundred rupees or upwards:

(f) If he makes any material omission in any statement relating to his affairs, unless the Court is satisfied that he had no intent to defraud:

(g) If knowing or believing that a false debt has been proved by any person under the bankruptcy, he fail for for the period of a month to inform such trustee as aforesaid thereof:

(h) If after the presentation of a bankruptcy petition by or against him, he prevents the production of any book, document, paper or writing affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(i) If after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he conceals, destroys, mutilates or falsifies, or is privy to the concealment, destruction, mutilation or falsification of, any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(j) If after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he makes or is privy to the making of any false entry in any book or document affecting or relating to his property or affairs, unless the Court is satisfied that he had no intent to conceal the state of his affairs or to defeat the law:

(k) If after the presentation of a bankruptcy petition by or against him, or within four months next before such presentation, he fraudulently parts with, alters or makes any omission, or is privy to the fraudulently parting with, altering or making any omission, in any document affecting or relating to his property or affairs:

(l) If after the presentation of a bankruptcy petition by or against him, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses:

[46 & 47 Vic., c. 52, s. 31.]

(m) If while undischarged he obtains credit to the extent of two hundred rupees or upwards from any person without informing such person that he is an undischarged bankrupt:

(n) If within four months next before the presentation of a bankruptcy petition by or against him, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same:

(o) If within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, obtains under the false pretence of carrying on business and dealing in the ordinary way of his trade, any property on credit, and has not paid for the same, unless the Court is satisfied that he had no intent to defraud:

(p) If within four months next before the presentation of a bankruptcy petition by or against him, he, being a trader, pawns, pledges or disposes of otherwise than in the ordinary way of his trade any property which he has obtained on credit and has not paid for, unless the Court is satisfied that he had no intent to defraud:

(q) If he is guilty of any false representation or other fraud for the purpose of obtaining the consent of his creditors or any of them to any agreement with reference to his affairs or his bankruptcy.

[32 & 33 Vic., c. 62, s. 12. 46 & 47 Vic., c. 52, s. 163.]

106. Penalty for absconding with property. If any person against whom a receiving order has been made under this Act after the presentation of a bankruptcy petition by or against him, or within four months before such presentation, quits British India and takes with him, or attempts or makes preparation for quitting British India and for taking with him, any part of his property to the amount of two hundred rupees or upwards, which ought by law to be divided amongst his creditors, he shall (unless the Court is satisfied that he had no intent to defraud) be punished with imprisonment which may extend to two years, or with fine, or with both.

107. Penalty on fraudulently obtaining credit, &c. Any person shall in each of the cases following be punished with imprisonment which may extend to one year, or with fine, or with both; that is to say,— [32 & 33 Vic., c. 62, s. 13.]

(1) if in incurring any debt or liability he has obtained credit under false pretences, or by means of any other fraud;

(2) if he has with intent to defraud his creditors, or any of them, made, or caused to be made, any gift, delivery or transfer of or any charge on his property;

(3) if he has, with intent to defraud his creditors, concealed or removed any part of his property since or within two months before the date of any unsatisfied decree or order for payment of money obtained against him.

108. Penalty on false claim, &c. If any creditor, in any bankruptcy composition or arrangement with creditors, wilfully and with intent to defraud makes any false claim, or any proof, declaration or statement of account which is untrue in any material particular, he shall be punished with imprisonment which may extend to one year, or with fine, or with both. [32 & 33 Vic., c. 62, s. 14.]

109. Debts incurred by fraud. Where a debtor makes any composition or arrangement with his creditors, he shall remain liable for the unpaid balance of debt which he incurred or increased, or whereof before the date of the arrangement or composition he obtained forbearance, by any fraud, provided the defrauded creditor has not assented to the arrangement or composition otherwise than by proving his debt and accepting dividends. [32 & 33 Vic., c. 62, s. 15.]

110. Order by Court for prosecution on report of official receiver or trustee. Where the official receiver or a trustee in any bankruptcy reports to any Court exercising jurisdiction in bankruptcy that in his opinion a debtor against whom a receiving order has been made under this Act has been guilty of any offence under this Act, or under section 421, 422, 423 or 424 of the Indian Penal Code, or where any such Court is satisfied upon the representation of any creditor or member of the committee of inspection that there is ground to believe that the debtor has been guilty of any offence as aforesaid, that Court shall, if it appears to it that there is a reasonable probability that the debtor may be convicted, order the official receiver or trustee to prosecute him for such offence. [32 & 33 Vic., c. 62, s. 16. 46 & 47 Vic., c. 52, s. 166.] XLV of 1860.

111. Criminal liability after discharge or composition. Where a debtor has been guilty of any offence he shall not be exempt from being proceeded against therefor by reason that he has obtained his discharge or that a composition or scheme of arrangement has been accepted or approved. [46 & 47 Vic., c. 52, s. 32.]

PART IX.

SUPPLEMENTAL PROVISIONS.

Application of Act.

112. Application to married woman. A married woman shall, in respect of her separate property (if any), be subject to this Act in the same way as if she were unmarried. [46 & 47 Vic., c. 75, s. 2.]

113. Exclusion of partnerships and companies. A receiving order shall not be made against any corporation, or against any partnership or association, or company registered under any enactment relating to companies for the time being in force. [46 & 47 Vic., c. 52, s. 33.]

114. Administration in bankruptcy of estate of person dying insolvent. *(1)* Any creditor of a deceased debtor whose debt would have been sufficient to support a bankruptcy petition against such debtor, had he been alive, may present to the Court a petition in the prescribed form praying for an order for the administration of the estate of the deceased debtor according to the Law of Bankruptcy. [46 & 47 Vic., c. 52, s. 34.]

(2) Upon the prescribed notice being given to the executor, administrator or other legal representative of the deceased debtor, the Court may, in the prescribed manner, upon proof of the petitioner's debt, unless the Court is satisfied that there is a reasonable probability that the estate will be sufficient for the payment of the debts owing by the deceased, make an order for the administration in bankruptcy of the deceased debtor's estate, or may upon cause shown dismiss such petition with or without costs.

(3) An order of administration under this section shall not, in cases where a grant of probate or administration is required to establish a title as legal representative, be made until the expiration of two months from the date of the

The Indian Bankruptcy Bill, 1885.
(Part IX.—Supplemental Provisions.—Sections 115-124.)

grant of probate or letters of administration, unless with the concurrence of the legal representative of the deceased debtor, or unless the petitioner proves to the satisfaction of the Court that the debtor committed an act of bankruptcy within three months prior to his decease.

(4) A petition for administration under this section shall not be presented to the Court after proceedings have been commenced in any Court of justice for the administration of the deceased debtor's estate; but that Court may, in such case, on the application of any creditor, and on proof that the estate is insufficient to pay its debts, transfer the proceedings to the Court exercising jurisdiction in bankruptcy, and thereupon such last-mentioned Court may, in the prescribed manner, make an order for the administration of the estate of the deceased debtor, and the like consequences shall ensue as under an administration order made on the petition of a creditor.

(5) Upon an order being made for the administration of a deceased debtor's estate, the property of the debtor shall vest in the official receiver of the Court, as trustee thereof, and he shall forthwith proceed to realize and distribute the same in accordance with the provisions of this Act.

(6) With the modifications hereinafter mentioned, all the provisions of Part III of this Act, relating to the administration of the property of a bankrupt, shall, so far as the same are applicable, apply to the case of an administration order under this section in like manner as to an order of adjudication under this Act.

(7) In the administration of the property of the deceased debtor under an order of administration, the official receiver shall have regard to any claim by the legal representative of the deceased debtor to payment of the proper funeral and testamentary expenses incurred by him in and about the debtor's estate, and such claims shall be deemed a preferential debt under the order, and be payable in full, out of the debtor's estate, in priority to all other debts.

(8) If, on the administration of a deceased debtor's estate, any surplus remains in the hands of the official receiver, after payment in full of all the debts due from the debtor, together with the costs of the administration and interest as provided by this Act in case of bankruptcy, such surplus shall be paid over to the legal representative of the deceased debtor's estate, or dealt with in such other manner as may be prescribed.

(9) Notice to the legal representative of a deceased debtor of the presentation by a creditor of a petition under this section shall, in the event of an order for administration being made thereon, be deemed to be equivalent to notice of an act of bankruptcy, and after such notice no payment or transfer of property made by the legal representative shall operate as a discharge to him as between himself and the official receiver; save as aforesaid nothing in this section shall invalidate any payment made or any act or thing done in good faith by the legal representative before the date of the order for administration.

(10) Unless the context otherwise requires, "Court," in this section, means the Court exercising jurisdiction in bankruptcy within the local limits of the jurisdiction of which the debtor resided or carried on business for the greater part of the six months immediately prior to his decease: "creditor" means one or more creditors qualified to present a bankruptcy petition as in this Act provided.

(11) General rules, for carrying into effect the provisions of this section, may be made in the same manner and to the like effect and extent as in bankruptcy.

General Rules.

[46 & 47 Vic., c. 52, s. 132.]

115. *(1)* The High Court of a province may, from time to time, with the concurrence of the Governor General in Council, make, revoke and alter general rules for carrying into effect the objects of this Act.

Power to make general rules.

(2) All general rules made under the foregoing provisions of this section shall be judicially noticed, and shall have effect as if enacted by this Act.

(3) Such general rules as may be required for purposes of this Act may be made at any time after the passing of this Act.

(4) Provided that the said general rules so made, revoked or altered shall not extend the jurisdiction of the Court.

(5) After the commencement of this Act no general rule under the provisions of this section shall come into operation until the expiration of one month after the same has been made and issued.

Fees and Remuneration.

116. *(1)* The High Court of a province may, with the previous sanction of the Governor General in Council, from time to time prescribe a scale of fees and percentages to be charged for or in respect of proceedings under this Act, and direct by whom and in what manner the same are to be collected, accounted for, and to what account they shall be paid.

Fees and remuneration.

(2) The High Court may, with the like sanction, from time to time fix the remuneration to be paid to the official receivers.

(3) This section shall come into operation on the passing of this Act.

Evidence.

[46 & 47 Vic., c. 52, s. 132.]

117. *(1)* A copy of the *Gazette of India* or of a Local Government, containing any notice inserted therein in pursuance of this Act or the rules made under this Act, shall be evidence of the facts stated in the notice.

Gazettes to be evidence.

(2) The production of a copy of the Gazette containing any notice of a receiving order, or of an order adjudging a debtor bankrupt, shall be conclusive evidence in all legal proceedings of the order having been duly made, and of its date.

[46 & 47 Vic., c. 52, s. 133.]

118. *(1)* A minute of proceedings at a meeting of creditors under this Act, signed at the same or the next ensuing meeting by a person describing himself as, or appearing to be, chairman of the meeting at which the minute is signed, shall be received in evidence without further proof.

Evidence of proceedings at meetings of creditors.

(2) Until the contrary is proved, every meeting of creditors in respect of the proceedings whereof a minute has been so signed shall be deemed to have been duly convened and held, and all resolutions passed or proceedings had thereat to have been duly passed or had.

[46 & 47 Vic., c. 52, s. 134.]

119. Any petition or copy of a petition in bankruptcy, any order or certificate or copy of an order or certificate made by any Court having jurisdiction in bankruptcy, any instrument or copy of an instrument, affidavit or document made or used in the course of any bankruptcy proceedings, or other proceedings had under this Act, shall, if it appears to be sealed with the seal of any Court having jurisdiction in bankruptcy, or purports to be signed by any Judge thereof, or is certified as a true copy by any Registrar thereof, be receivable in evidence in all legal proceedings whatever.

Evidence of proceedings in bankruptcy.

[11 & 12 Vic., c. 21, s. 80. 46 & 47 Vic., c. 52, s. 135.]

120. Subject to general rules any affidavit may be used in a Bankruptcy Court if it is sworn—

Swearing of affidavits.

(1) in British India, before—

(a) any Court or Magistrate,

(b) any officer whom the High Court of a province may appoint in this behalf, or

[Act XIV of 1882, s. 197.]

(c) any officer appointed by any other Court which the Local Government has generally or specially empowered in this behalf;

(2) in England, before any person authorised to administer oaths in Her Majesty's High Court of Justice, or in the Court of Chancery of the County Palatine of Lancaster, or before any Registrar of a Bankruptcy Court, or before any officer of a Bankruptcy Court authorised in writing on that behalf by the Judge of the Court;

(3) in Scotland or in Ireland, before a Judge Ordinary, Magistrate or Justice of the Peace; and

(4) in any other place, before a Magistrate or Justice of the Peace or other person qualified to administer oaths in that place (he being certified to be a Magistrate or Justice of the Peace, or qualified as aforesaid by a British Minister or British Consul or Political Agent or by a notary public).

[46 & 47 Vic., c. 52, s. 136.]

121. In case of the death of the debtor or his wife, or of a witness whose evidence has been received by any Court in any proceeding under this Act, the deposition of the person so deceased, purporting to be sealed with the seal of the Court, or a copy thereof purporting to be so sealed, shall be admitted as evidence of the matters therein deposed to.

Death of witness.

[11 & 12 Vic., c. 21, s. 4. 46 & Vic., c. 52, s. 137.]

122. Every Court having jurisdiction in bankruptcy under this Act shall have a seal describing the Court in such manner as may be directed by order of the High Court of the Province, and judicial notice shall be taken in all legal proceedings of the seal, and of the signature of the Judge or Registrar of any such Court having such jurisdiction.

Bankruptcy Courts to have seals.

[46 & 47 Vic., c. 52, s. 138.]

123. A certificate of the Court, that a person has been appointed trustee under this Act, shall be conclusive evidence of his appointment.

Certificate of appointment of trustee.

Time.

[46 & 47 Vic., c. 52, s. 141.]

124. *(1)* Where by this Act any limited time from or after any date or event is appointed or allowed for the doing of any act or the taking of any proceeding, then in the computation of that

Computation of time.